TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 637.

FEDERAL TRADE COMMISSION, PETITIONER,

vs.

STANDARD OIL COMPANY (NEW JERSEY).

No. 638.

FEDERAL TRADE COMMISSION, PETITIONER,

vs.

GULF REFINING CO.

No. 639.

FEDERAL TRADE COMMISSION, PETITIONER,

vs.

MALONEY OIL MANUFACTURING CO.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

VOLUME II.

PETITIONS FOR WRITS FILED OCTOBER 5, 1922.
WRITS OF CERTIORARI AND RETURN FILED JANUARY 12, 1923.

(29187, 29188, 29189)

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Testimony Taken at N. Y. C. Nov. 20, 21, 22, 1919.

BEFORE THE FEDERAL TRADE COMMISSION.

FEDERAL TRADE COMMISSION, Complainant, vs. ATLANTIC REFINING COMPANY, Respondent.	Docket No. 131.

FEDERAL TRADE COMMISSION, Complainant, vs. STANDARD OIL COMPANY OF NEW YORK, Respondent.	Docket No. 134.

FEDERAL TRADE COMMISSION, Complainant, vs. MALONEY OIL & MANUFACTURING CO., Respondent.	Docket No. 309.

FEDERAL TRADE COMMISSION, Complainant, vs. PAVANIA OIL COMPANY, Respondent.	Docket No. 312.

FEDERAL TRADE COMMISSION, Complainant, vs. RED "C" OIL MANUFACTURING CO., Respondent.	Docket No. 313.

FEDERAL TRADE COMMISSION, Complainant, vs. KENDALL REFINING COMPANY, Respondent.	Docket No. 316.

FEDERAL TRADE COMMISSION, Complainant, vs. GULF REFINING COMPANY, Respondent.	Docket No. 320.

FEDERAL TRADE COMMISSION, Complainant, vs. HARRIS & COMPANY, ELMER E., Respondent.	Docket No. 331.

FEDERAL TRADE COMMISSION, Complainant, vs. SUOR OIL PRODUCTS CORPORATION, Respondent.	Docket No. 333.

FEDERAL TRADE COMMISSION, Complainant, vs. LOUIS BLAUSTEIN (AMERICAN OIL CO.), Respondent.	Docket No. 335.

FEDERAL TRADE COMMISSION, Complainant, vs. STANDARD OIL COMPANY OF NEW JERSEY, Respondent.	Docket No. 337.

FEDERAL TRADE COMMISSION, Complainant, vs. TEXAS OIL COMPANY, Respondent.	Docket No. 373.

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New York, N. Y., November 20, 1919, 10:00 o'clock A. M. 9

Before: George McCorkle, Examiner.

Met pursuant to notice.

Appearances:

C. L. Zechiel and Joseph A. Burdeau, attorneys for the Commission.

Peter M. Speer, 26 Broadway, New York City, for Standard Oil Company of New York.

Guy Wellman and J. H. Hayes, 26 Broadway, New York, for Standard Oil Company of New Jersey.

James L. Nesbitt, 17 Battery Place, New York City, for the Texas Company.

Harry N. Mankin, 1005 Morris Building, Philadelphia, for Brown & Williams, attorneys for Atlantic Refining Company.

W. D. Guthrie, for Gulf Refining Company.

Examiner McCorkle: Are you ready to proceed, gentlemen?

Mr. Zechiel: Yes, sir.

Examiner McCorkle: Are the respondents ready? I will call the several dockets:

Federal Trade Commission against Suor Oil Products Corporation; is that represented? (No response.)

Federal Trade Commission against the Pavania Oil Company; is that company represented? (No response.)

Federal Trade Commission against the Standard Oil Company of New York; is that company represented? (No response.)

When I ask if these companies are represented, I mean either in person or by attorney. If there is anybody here in person representing them, please answer.

Federal Trade Commission against Kendall Refining Company; is there anybody here representing that company? (No response.)

Federal Trade Commission against Louis Blaustein (American Oil Company).

Mr. Zechiel: He will not be here.

Examiner McCorkle: Federal Trade Commission against the Gulf Refining Company.

Mr. Guthrie: That is represented.

Examiner McCorkle: Federal Trade Commision against Atlantic Refining Company; is there anybody here representing that company? (No response.)

Federal Trade Commission against the Standard Oil Company of New Jersey; is there anybody here representing that company? (No response.)

Federal Trade Commission against the Maloney Oil & Manufacturing Company. Is there anybody here representing that company? (No response.)

Federal Trade Commission against the Red "C" Oil Manufacturing Company; is there anybody here representing that company? (No response.)

Federal Trade Commission against Harris & Company, Elmer, E.; is there anybody here representing that company? (No response.)

Federal Trade Commission against the Texas Oil Company; is there anybody here representing that company?

Mr. Nesbitt: Yes; James L. Nesbitt.

Examiner McCorkle: We will not proceed immediately because we have informataion that seme gentlemen intend to be here who have not yet arrived—some of the respondents' attorneys.

Whereupon a recess was taken from 10:10 A. M. until 10:30 A. M..

AFTER THE RECESS.

Mr. Zechiel: The Standard Oil Company of New York and the Standard Oil Company of New Jersey are now represented, Mr. Examiner.

Before we proceed further, I would like to make a motion that the case of the Federal Trade Commission against the Texas Company be joined in this hearing along with the other cases. That case was not joined by order of the Commission, on my motion before the Commission.

Mr. Nesbitt: Am I correct in understanding that the testimony to be taken here is consolidated testimony in all of these cases, and the record as regards each company will go up *in toto;* that the case as against each company will be judged on the total record made in these hearings, and that there will be no distribution of testimony as regards any particular company? For instance, there might be circumstances as regards some of these respondents that are different than as regards others, and when the respondents come to put in their cases, if that is done, how will that testimony
17 apply? Will it be lumped together or must all the respondents introduce their cases as one, or as individuals?

Examiner McCorkle: I suppose each company would have a right to look after its own defense.

Mr. Speer: I apprehend, Mr. Examiner, that while the testimony is to be taken and to be applied in all the cases, yet testimony that is not applicable to a particular case would not be considered in that case?

Examiner McCorkle: That is correct.

Mr. Nesbitt: The only point I have in mind about that, Mr. Examiner, is that there might be some difficulty, in examining a large record such as will
18 probably be made here, in deciding just what part of that testimony applies to what company and what does not. I can easily see that it would make a great duplication of testimony, however, if it were to be taken as against each one of these respondents. I was just inquiring as to how the testimony would be handled.

Mr. Zechiel: In explanation, to satisfy your own mind about it, I may say that there will probably be very little evidence introduced that will not go generally to the question involved: that is about all we are taking testimony on. Most of the rest of the facts are either admitted in the answers or will be admitted

or stipulated; so that it will be fairly free from anything except the general economic situation which will apply generally throughout the whole territory. Therefore, wherever the evidence is applicable on that question, or on a question of jurisdiction which might be involved, the testimony will go to all the cases to which it will be applicable.

So far as defense is concerned, the practice in the Ohio hearing was, where we had fourteen respondents —there are only twelve here—in the Ohio hearing the practice was that the respondents introduce evidence for the benefit of all the companies, my motion. 20

Mr. Zechiel: I will call Mr. Fox.

Testimony of George F. Fox.

GEORGE F. FOX was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination, by Mr. Zechiel:

Q. State your name please. A. George F. Fox.

Q. What is your address A. 244 Madison Avenue, New York.

Q. With what concern are you associated ? A. The Indian Refining Company. 21

Q. How long have you been with the Indian Refining Company? A. Twelve years.

Q. Did you have any experience generally in the oil industry prior to that time? A. Eighteen years with the Standard Oil Company.

Q. That is the New York Company? A. No; that was the Standard Oil Company—it was originally the Consolidated Tank Line Company, and then the Standard Oil Company of Kentucky, and then, about the last two years, the Standard Oil Company of Ohio.

Q. Since you have been with the Indian Refining Company, what have been your duties? A. From the

22 *George F. Fox, Direct*

time I went with them I had charge of their station distribution, and now I have charge of the entire distribution.

Q. What is the territorial extent over which your company does business? A. Refined oil and gasoline, practically all of the states of the United States east of the Mississippi River.

Q. Your general business is the sale and distribution of refined oil and gasoline? A. That, and automobile oil products.

Q. In connection with your sale and distribution of
23 refined oil and gasoline, have you ever handled what is commonly known as the curbstone pump oil tank and pump outfit? A. We have not.

Q. Have you had, during the course of your experience in the oil industry, an opportunity to come in contact with the general sale and distribution of gasoline in the various states in which your company does business? A. Yes, sir.

Q. What has been your general experience along that line? A. I have practically dictated the policy that our company have pursued since I have been with them.

Q. During that time have you travelled about over
24 these various areas? A. Yes, sir.

Q. And in that connection have you had occasion to visit various retail stores or garages and other places which retail gasoline? A. No; I did not put my time in in connection with visiting garages. My duties would be more particularly in connection with the local representatives who did look after that class of work.

Q. And that connection it is a fact that reports were made to you as to conditions among the retailers? A. Yes, sir.

Q. Are you acquainted with the general practice of leasing and loaning oil tanks and pumps for a nominal

consideration under what is known as tying conditions or contracts in the oil industry? A. I am.

Q. In connection with your business for your company you may state whether or not your company has ever lost customers because of the refusal, upon request, to install oil tanks and pumps for a small or nominal consideration. A. We have lost customers without number; any quantity of them.

Q. Could you estimate, in a general way, about the number? A. I would say at the very least that twenty-five per cent of the gasoline business that we developed each year has been lost on account of our refusal to 26 install storage.

Q. To whom, generally, do you sell your product? A. We specialize in the sale of gasoline to the garage men; the garage men and the filling stations; that is, we do not cater to the consumer.

Q. Do you, in connection with your business, have what is commonly known as service stations owned by your company? A. We have no service stations whatsoever. At some few of our tank stations, we may have a pump at our plant, but we have no service stations, in the strict sense of the word.

Q. Then to what do you refer when you sell through filling stations? A. There are a great many parties 27 around the country who will deal principally in oil and gasoline as a distinctive line of business, compared with the garage man who will also deal in oil and gasoline, and will also store and repair motor cars.

Q. Is there any difference, so far as the method of distribution is concerned, between the garage business and the filling station business? A. There is none so far as the distribution of gasoline is concerned.

Q. Who are your competitors in your territory? A. Everybody selling refined oil and gasoline.

Q. Are you in competition with the Texas Company? A. We are.

28 *George F. Fox, Direct*

Q. Do you know in what areas you are in competition with that company; in what places? A. Principally in North Carolina, Virginia, New York State, Illinois and Louisiana.

Q. Do you sell in Tennessee? A. Yes, sir.

Q. The Texas Company are not your competitors there though? A. I do not think the Texas Company are located in Tennessee. I might add the State of Alabama, there, to the list that I gave a moment ago.

Q. In connection with your business, does your company make a practice of advertising its gasoline
29 through the curb station pump? A. We do not make a practice of doing it. We will furnish Indian gasoline signs to the garage man when he requests it.

Q. What sort of a sign is that? A. It would be a small metal sign, about ten inches wide and about fourteen inches long.

Q. You have never used the electric bulb sign that is commonly placed on top of the pumps? A. No, sir—well, we do not furnish anything like that for regular equipment. We have some few requests, I would say—take the territory we have operated in, I would say take over a period of the last three or four years, and the total requests for an item of that kind
30 would not exceed six in number.

Q. As to the gasoline which you handle and sell to the public, do you sell various kinds of gasoline, or is it all one grade of gasoline? A. Practically all one grade.

Q. Do you think that the leasing and loaning of oil pumps and tanks for a nominal consideration, under contracts not to use through such pumps, any gasoline of a competitior, is a fair business practice in your territory?

> Mr. Speer: I wish to object to the testimony as incompetent and immaterial. The witness should be confined to facts as to what is being done by the companies.

Mr. Guthrie: I make the further objection that he has not qualified as an expert sufficiently to give an opinion.

Mr. Speer: My position is that even if he did qualify as an expert, he is not entitled to give an opinion.

Examiner McCorkle: Our practice is to note the objection of the attorneys to the question, and the objection is overruled, and the witness will proceed. These matters come up finally for adjudication before the Federal Trade Commission. 32

Mr. Nesbitt: May I have the question read?

(The reporter repeated the question as above recorded.)

Mr. Nesbitt: Mr. Examiner, another objection can be made to that question: It is simply asking whether the practice is lawful or not, pretty nearly. That is what he is coming down to.

Examiner McCorkle: The Objection is noted.

Mr. Burdeau: I would like to say, Mr. Examiner, that in these cases particularly the commission has made it a practice when they were 33 hearing evidence themselves, to receive opinion evidence from gentlemen who were shown to be acquainted with the oil business.

Mr. Zechiel: Before the witness answers that' I would like to ask him several more questions.

By Mr. Zechiel:

Q. You say you have been engaged in the general oil business for a period of eighteen and twelve years, Mr. Fox? A. Yes, sir.

Q. And during the past twelve years it has been your business to dictate the sales policies of your company? A. Yes, sir.

34 *George F. Fox, Direct*

Q. During that time, to what extent have you studied the general question of sale and distribution of gasoline? A. That is what I was being paid for, so I would say that I certainly must have studied it.

Q. In that connection, did you study the effects of practices upon various oil companies, generally, or confine yourself only to the Indian Refining Company? A. I confined myself to the effects it would have on the Indian Refining Company's business.

Q. In that connection, did you ever study the question of leasing or loaning pumps for a nominal con-
35 sideration, under these tying provisions, with a view to adopting it for your company? A. I did.

Q. And in considering it from that point of view, to what extent, if any, did you investigate the practice as followed by other oil companies? A. I naturally received reports from our field men as to just what was being done.

Mr. Speer: It seems to me that "tying provisions" is too indefinite. The witness might have one idea of tying contracts, and we might have another.

Mr. Zechiel: I will confine the question more specifically. You were objecting to the
36 last question?

Mr. Speer: Yes.

Mr. Zechiel: I should like to supplement that objection. "Tying agreement" is supposed to have some—

Examiner McCorkle: I understand that Mr. Zechiel withdraws that question?

Mr. Zechiel: Yes. I wish to substitute another question for it. I will put the question in this way:

By Mr. Zechiel:

Q. In that connection, did you ever study the question of leasing and loaning pumps for a nominal consideration, under the condition or understanding that

the leasee of such pump was not to use in connection with the pump or the tank, or sell through the pump or from the tank, or place within the tank gasoline products of any other company or any other concern than that leasing or loaning the pump? A. I did.

Q. To what extent did you make such a study? A. To a very considerable extent.

Q. Could you go into that more in detail, Mr. Fox? A. As the distribution of gasoline, say over the last ten years, has gotten to be more and more practically the back bone of the oil industry, we naturally went into it to a very great extent. 38

Q. Did you study the practice as used by other oil companies? A. Yes, sir.

Q. Were any of those companies small companies? A. To be really frank, as a general proposition, we did not pay so very much attention to the policy of the small companies. We would naturally be guided more particularly by what such companies as the Standard Oil Company, the Gulf Refining Company, the Texas Company, and in the later years, the Sinclair Refining Company would do; I mean the various Standard Oil Companies when I say "Standard Oil."

Q. In that connection, did you consider the practice from the point of view of the amount of capital neces- 39
sary to be invested in order to carry on the practice? A. You mean the amount of capital that we would have to invest?

Q. Yes. A. I should say not.

Q. Was the question of the amount of capital a consideration in your investigation? A. Nothing further than that, naturally, if you are going to spend a certain amount of money to properly conduct your business, you are going to spend it in a way that you thought was going to bring you the best results.

Mr. Zechiel: Now, I would like to have my former question read, to which objection was made.

40 *George F. Fox, Direct*

(The reporter repeated the question as follows:)

"Q. Do you think that the leasing and loaning of oil pumps and tanks for a nominal consideration, under contracts not to use, through such pumps, any gasoline of a competitor, is a fair business practice in your territory?"

Mr. Guthrie: There have been some additional questions with a view to establishing the competency of this witness, and I wish to re-
41 new my objection as incompetent, as the evidence now being offered is incompetent and irrelevant and the witness has not yet shown sufficient judgment to qualify as an expert, and is not entitled to give an opinion.

Examiner McCorkle: The objection is overruled.

Mr. Nesbitt: Will it be necessaary for the different respondents to record objections?

Examiner McCorkle: I do not think so; no, sir.

Mr. Nesbitt: Will the one objection apply to all respondents?

42 Mr. Zechiel: Let it be so understood.

Examiner McCorkle: Yes; it may be so understood.

(After an informal discussion.)

Mr. Zechiel: Now, I would like to have my quuestion again read.

(The reporter repeated the question referred to as follows):

"Q. Do you think that the leasing and loaning of oil pumps and tanks for a nominal consideration, under contracts not to use, through such pumps, any gasoline of a competitor, is a fair business practice in your territory?" A. I do not.

By Mr. Zechiel:

Q. What are the reasons for your opinion in that respect, Mr. Fox? A. I think that it is unfair for the reason that it is practically buying you a man's business.

Q. Do you have anything further to say in answer to the question along that line? A. Nothing except that that is proving out in practically every instance, when a customer to whom we might have been selling gasoline year in and year out, which gasoline was strictly satisfactory to his consumers, that when such customer is approached with the leasing at a nominal sum proposition, or the furnishing free of a tank, that if we did not meet such propositions —and we did not meet them—it, in practically all cases, resulted in the immediate and total loss of that business. 44

Q. What were the reasons why you, for your company, refused to adopt this as a method of competition? A. Naturally we are in business to make money. If we had to spend money, we would like to spend it in a way to get the most out of it, figuring, of course, that whichever way we spent it we had to give due consideration to our future business, which naturally meant to consider what effect the policy we adopted would have upon the retaining of our customers. 45

Mr. Burdeau: I understood you to say that you had at one time considered the adoption of this loaning or leasing plan, and had rejected it?

The Witness: I would not just say that. I would say that, coming down the lane of years, we considered the various methods being adopted by our competitors.

Mr. Burdeau: You know that a number of oil companies with whom you are in competition have

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adopted the plan of leasing or loaning pumps for a nominal consideration?

The Witness: Sure.

Mr. Burdeau: You recognize that the purpose of that scheme or plan is to get customers and keep customers, do you not?

Mr. Guthrie: That is objected to. It is perfectly absurd for the attorney to suggest testimony in that manner, even at a hearing of this character.

47 Examiner McCorkle: Yes. Do not lead the witness.

Mr. Burdeau: May I ask you what is generally understood in the oil business as to the purpose of these pump and tank contracts?

The Witness: The purpose was to take away from any company that would not follow that same plan the business that they already had.

Mr. Speer: I wish to object to the question as to the purpose of these companies. I do not think the witness is qualified to give an opinion upon that. He should be confined

48 to the facts.

Examiner McCorkle: I think that objection is well taken.

Mr. Burdeau: As to a general understanding in the trade with which he is familiar, Mr. Examiner, is not that a fact?

Examiner McCorkle: If he can state the purpose and is willing to make that statement under oath, I will have to let him state it, but if he does not, that is a pretty far-reaching thing to state.

Mr. Burdeau: What I want you to bring out, Mr. Fox, is, with the knowledge that your competitors were using this practice, why did not the Indian

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Refining Company adopt it to meet such competition?

Mr. Nesbitt: I object. That is telling the witness, almost, what he is to say.

Mr. Burdeau: Oh, no. I can put a hypothetical question to a man who has qualified himself as an expert in the oil business and in the distributing branch of the oil business. I think there can be no doubt that Mr. Fox has fully qualified himself to testify as to the practices and plans and methods of distributing gasoline.

50

Examiner McCorkle: It seems to me that Mr. Fox has been over that. I will permit the witness to answer the question, however, under objection.

The Witness: We did not consider the leasing or loaning of tanks as a good business practice because, on an even basis, the average oil company should be able to maintain and secure their shares of the business.

The practice of loaning or furnishing tanks free was one that meant if you endeavored to retain the major part of your business by meeting such practice, your competitor who might loan these tanks, or give them away, would simply go you one better by either furnishing a better or more costly tank, or putting in an additional tank for his own product. We considered that the average distributor of gasoline could and should furnish his own facilities. We were willing to take our chance on securing a fair volume of business on that basis.

51

CROSS-EXAMINATION by Mr. Nesbitt:

Q. Mr. Fox, how long did you say you had been with the Indian Refining Company? A. Twelve years.

52 Q. Will you be good enough to tell me the capitalization of the Indian Refining Company? A. Six million dollars. There has been an increase of some eight million dollars, but I do not think it has been issued.

Q. That brings it up to— A. As I say, I do not think it has been issued. I know it has not been issued.

Q. Your business is the marketing of gasoline and refined oils? A. And all products of petroleum, including the refining of the same. When you say
53 "your business," you mean the business of the Indian Refining Company?

Q. Yes. A. Yes.

Q. Has the business of the Indian Refining Company expanded since you have been with the company? A. Yes, sir.

Q. Can you give us an idea about the rate of the expanding of the business annually during the period of your service with them? A. Not unless I have to. This is a competitive meeting, here.

Mr. Burdeau: I will object to on that ground.

54 The Witness: I do not believe I should expose our business here where you can pick it to pieces unless I have to.

By Mr. Nesbitt:

Q. I do not intend to urge it with any such view as that in mind, but I should be glad if you would give us an idea of the rate of increase of your business during that period.

Mr. Zechiel: I do not see how it is material. It is asking for a sort of information that the oil companies, as competitors, are not entitled to.

55

The Witness: I do not mind saying that it has increased. I will give you that much, to come back with your next question.

By Mr. Nesbitt:

Q. I will withdraw the last question, then, and let Mr. Fox's answer stand—this last answer. About how long has the use of the tank and pump been in effect? A. I would say that it started within the last ten years. It has increased the last five years very much more in proportion than it had the previous years. For instance, I left the Standard Oil 56
Company of Ohio in 1907, at which time I was manager for them at Cincinnati, Ohio, and we had no tank proposition at that time. When I say "we," I mean they had no tank proposition at that time.

Q. How long ago was that? A. 1907.

Mr. Zechiel: By that he means under these leasing contracts.

The Witness: All through this testimony, I mean this general proposition.

By Mr. Nesbitt:

Q. I meant, how long had the facility of the pump 57
and the tank used in connection with it been in use? A. I would not want to specify the particular year, but it has come in within the last ten years; I should say more particularly within the last five years of that ten.

Q. And during all the time of the use of the pump and the tank in connection with it, your business has expanded; is that correct? A. Yes; our gasoline business has increased each year.

Q. You have been getting your share of the business in each territory where you have been marketing? A. Yes; but we have not been getting it the way the fellow that has put in the tanks has.

58 *George F. Fox, Cross*

Mr. Nesbitt: I object to that answer.

Mr. Zechiel: Oh, I think the answer ought to stand by all means.

Mr. Nesbitt: I move to strike out the last part of that answer; the last clause of the answer.

Examiner McCorkle: The motion is overruled.

Mr. Nesbitt: It is not responsive to my question.

Mr. Zechiel: I think it is quite responsive.

59 By Mr. Nesbitt:

Q. I will ask you, Mr. Fox, again, to tell me the rate at which your business has expanded? A. I will not answer that unless I have to.

Mr. Burdeau: I make formal objection to that.

Examiner McCorkle: The witness need not answer as to the rate. The attorney for the oil company stated, a few moments ago, that he was satisfied if he would state that it had increased.

60 By Mr. Nesbitt:

Q. Has your business been withdrawn from any territory, during the last five years, where you were previously competing? A. It has not been withdrawn; it has been curtailed in some sections.

Q. You are still doing business everywhere that you were doing it five years ago? A. I do not want to say that, exactly.

Q. I am not talking about a single station but— A. We may have some four or five stations, during the last ten years, that we may have opened up and then, later, closed.

Q. But no territory from which you have withdrawn? A. No, sir; no general territory.

Q. How long has it been since you last considered adopting the practice of leasing at nominal consideration tanks and pumps? A. I would say since the tanks and pumps came in it was almost our daily bread—the proposition of considering what you are going to do.

Q. If you are willing to do so, I should like you to say again why it was you decided not to adopt such policy of leasing pumps and tanks at a nominal consideration? A. That answer is in there.

Mr. Burleau: It is quite proper for counsel to ask you to repeat it. I would like to have you do it.

The Witness: I have practically answered that question twice.

Mr. Nesbitt: All right.

The Witness: I do not know of anything further that I can say.

Mr. Zechiel: If the counsel is insisting on the answer by Mr. Fox, I think our record ought to be kept straight and that Mr. Fox should answer.

Mr. Nesbitt: I am not insisting on it. I asked if he were willing to say again what he said before; that is all.

The Witness: I can give you, perhaps, a little more information than I gave you before, if I keep on. I think I have said that I have considered the furnishing of the tanks practically the buying of a man's business.

By Mr. Nesbitt:

Q. Is that all? A. I have considered it unfair because it bound the garage man who formerly bought part of his supplies from one or more companies to

Buy them exclusively from the company that was furnishing the tanks.

Q. Do you have a trade-mark? Does the Indian Refining Company have a trade-mark? A. Yes. That is, we have a trade brand. We have a grade of gasoline, Indian gasoline.

Q. You endeavor to connect that mark with all retail sales of your product? A. All of our tank wagon tickets, all of our signs—whenever we can use the value of a name in connection with gasoline, we sell it as Indian gasoline.

65 Mr. Nesbitt: That is all.

By Mr. Guthrie:

Q. We are not intended to understand you as stating that you refused to adopt this policy on the part of the Indian Refining Company for any other reason than for matters of economy and profit in the management of your business; is that correct? A. No; that is not correct. I stated that I did not believe that it was a fair practice.

Q. Is that the reason that the Indian Refining Company did not adopt it? A. If you are going to run business just for reasons, instead of giving some
66 consideration to the dollars and cents, you will not get very far.

Q. Then is it not a matter of fact that you, and the other managers of your company, considered that it was more profitable for the Indian Refining Company not to adopt this practice than to adopt it? A. I said somewhere there—

Q. I am not asking you what you said. I am asking you to answer this question, please.

(The reporter repeated the question as above recorded.)

The Witness: From the standpoint of both dol-

67

lars and cents and the future of our business, and the maintaining of the goodwill of our customers.

Mr. Guthrie: I would like to have a more specific answer to that question. Your answer is not responsive, at all, to my question. It can be answered yes or no.

(The reporter again repeated the question as above recorded.)

The Witness: No.

By Mr. Guthrie:

68

Q. Do you, then, consider that it would be more profitable for the Indian Refining Company to adopt this policy than not to adopt it? A. No.

Q. Those two answers are not consistent. A. I want to clear the atmosphere. We did not consider it from strictly a dollars and cents standpoint only.

Q. You considered that it was more profitable to adopt the policy that you did adopt, and not to put in pumps and tanks on these nominal rentals? A. Yes, sir.

Q. And that is the reason you have not adopted the plan that the other large companies have adopted in this matter? A. I just got through saying, there, 69
that we considered that in connection with the other proposition.

Q. But that was the dominant factor that led to your conclusion, was it not? A. I cannot say that it was. The dominant factor in connection with the marketing of petroleum products is what effect is the policy that you are going to pursue going to have on your business, not only at this time but in the future.

Q. Yes. You stated, in your examination in chief, that you had lost annually twenty-five per cent of your business: is that correct? A. I did not say that.

70 *George F. Fox, Cross*

Q. I understood you to say that. A. Oh, no. I said that it curtailed the business to the extent of—

Q. You stated, did you not—

Mr. Zechiel: Let the witness finish his answer.

Mr. Guthrie: I thought he was through.

The Witness: Say twenty-five per cent of whatever gallonage we may have had from a given number of customers. Naturally, as we were conducting a progressive business, if we lose gallonage for any
71 reason whatsoever, we do not simply stand still, but must devise ways and means of getting a sufficient volume to replace that which was lost.

By Mr. Guthrie:

Q. Did I or did I not understand you to say, in chief, that this practice of leasing pumps by your competitors resulted in the loss of twenty-five per cent of your customers annually? A. I did not say that.

Q. Did you or did you not make that statement? A. I never mentioned the word customers until just now.

72 Q. Did you make the statement that it resulted in the loss of customers without number to your company? A. I guess I did.

Q. Is it not a fact that your company, during the last five years, has sold all the gasoline that it produced or purchased? A. I will say that we sold more than we produced.

Q. Yes. A. I will say, also, that almost every other oil marketer did the same thing.

Q. Is it not a fact that your company has not lost one single gallon of sales by reason of the introduction of these pumps and tanks during the last five years? A. We have lost an immense amount of gallonage that we can trace directly—the loss of which

73

can be traced directly to the pumps that were furnished free or leased under these arrangements.

Q. But every gallon that you have lost you now state you supplied a trade for, a market for, and disposed of? A. Yes; but we did not supply it to the customers that we originally had.

Q. The fact of the matter is that you disposed of all the gasoline you had and could have disposed of far more than you had to sell in the last five years? A. I will not say that we could have disposed of a lot more than we had, because if we could have done so, we naturally should have done so.

74

Q. Well, you did dispose of all that you had? A. I do not consider that to have anything to do with the volume of business, for the reason that, for instance, we do both a wholesale or tank car business and a regular station business.

Q. Then, as a matter of fact, Mr. Fox, the Indian Refining Company has not suffered any actual loss— A. Oh, yes we have—

Q. In its business, by reason of the custom complained of? A. Oh, yes, we have.

Q. I would like you to explain that. A. If you had one hundred customers that were buying a nice round lot of gasoline from you and you lost the major part of them, you certainly do not have that original one hundred customers.

75

Q. You do not mean to suggest that the customers of any large oil company are constant and unchanging? A. I mean to say this: That over a period of a good many years, under normal conditions, the output that any company operating a string of stations will have, of not only gasoline but kerosene and other products, based on a normal increase in the demand, which will be based to a considerable extent, in the case of gasoline, on the number of new automobiles that are manufactured, can be forecast

76 *George F. Fox, Cross*

with a certainty that is almost astounding.

Q. That is the volume? A. Yes.

Q. But not the individual customers. A. You cannot get volume unless you come somewhere near retaining your original customers.

Q. Do you not have a continually active sales force visiting customers, and you are losing customers and taking on new customers daily? That is an incident of the business? A. Unless I have to answer that kind of questions, I am not going to show here just how and why we do things. I will answer any ques-
77 tion about whether we do it or not; but not how, unless we have to.

Q. Well, then, do you do it? A. What was your question?

Q. Oh, I will not insist on an answer. A. I will answer anything that you have.

Mr. Guthrie: That is all.

By Mr. Speer:

Q. Mr. Fox, the modern use of and demand for gasoline universally, is quite a recent development, is it not? A. As compared with the old days gasoline, of course, in those days was used more particularly
78 in stoves. Gradually, as the consumption increased, that used in stoves decreased, and that used in the automobiles, and in the last few years tractors, has increased by leaps and bounds.

Q. There was not much demand for it generally in stoves, either? A. Yes, there was a good demand for it in stoves. For instance, there was a demand, in a place like Cincinnati, back twelve or fifteen years ago, sufficient to maintain an equipment of delivery wagons that would have served a radius of, say, ten miles, and required an equipment of, say, about eighteen or twenty vehicles, that would have had an aver-

age daily output of, say, six hundred gallons per day.

Q. That was local use. It was not used generally over the country? There was not a demand for it everywhere? A. The Standard Oil Company of Cincinnati had one piece of equipment that served a certain route and, even in the days of stoves and before the automobiles came in, this wagon had an output of very close to 1,500 gallons per day.

Q. I am speaking of the country, generally, now, Mr. Fox. That was in that particular place. A. That was a fair exhibit of the country generally except, possibly, the east here, concerning which I knew nothing. My experience while with the Standard Oil Company covered marketing in Ohio, Indiana, New Orleans, Kentucky; and I would say that the amount of gasoline that was consumed was quite some factor. 80

Q. A very small amount in proportion to what is used now, however? A. "Small," of course, can mean anything.

Q. Make it definite if you wish—as definite as you please. A. I would rather not answer that. Statistics will show. For instance, inspections in states like Ohio and Indiana, of gasoline in those years, as compared with the later years, would give that information exactly. 81

Q. You have spoken several times in your testimony of the Standard Oil Company. As I understand, you have been referring, when you spoke of it in that way, to the Standard Oil Company of Ohio? A. Oh, no. I have made the statement that where I referred to the Standard Oil Company I meant whatever Standard Oil Company may have been doing business in the section in which we came in competition with them.

82 *George F. Fox, Cross*

Q. You spoke of certain territory where you had met competition in this matter of pumps with the Standard Oil Company, such as Virginia and North Carolina and others of the southern states. What Standard Oil Company did you refer to? A. Well, I referred to all of the Standard Oil Companies. For instance, in Ohio, it was the Standard Oil Company of Ohio; if we came in competition in New York State or Connecticut, it was the Standard Oil Company of New York; if we came in competition in Louisiana or Tennessee, it was the Standard Oil Com-
83 pany of Louisiana; if we came in competition in Kentucky, Alabama, or Georgia, it was the Standard Oil Company of Kentucky; in North Carolina, Virginia, West Virginia, Maryland, it was the Standard Oil Company of New Jersey; in Pennsylvania we came in competition with the Atlantic Refining Company.

Q. As I understand, your company does not operate any filling stations at all? A. No, sir, except, as I have stated, so that the matter is not understood or the testimony does not become conflicting, that we do have, at some few of our stations, a pump at our plant.

84 Q. That is where you have your manufacturing plant? A. At our railroad tankage plant.

Q. But you have never established what we call service stations in the towns? A. No, sir.

Q. And operated them yourselves? A. No, sir.

Q. That is quite a common practice, is it not? A. Yes, sir.

Q. When a company goes into a town and establishes a service station of that character, of course you cannot sell any gasoline to them, can you? A. No, sir.

Q. And that takes away, if you had been doing business in that town, it takes away some of your

trade, does it not? A. There is no particular reason to figure why—

Q. Answer my question, please. I asked you if that does not take away some of your trade. I want the fact. A. Not necessarily so.

Q. When the gasoline began to be used in gas engines and automobiles, generally, and the use of automobiles became so common, it created a demand for it practically all over the country, did it not? A. Yes, sir.

Q. Almost every individual, even the farmers, now has an automobile; isn't that a fact? A. Yes. 86

Q. And they all need gasoline? A. Yes.

Q. At the beginning of the business, when this demand arose, you would go into a territory to supply the demand, would you not? A. To supply part of it.

Q. Usually, at the beginning, the man who got in first would have, for a time, a practical monopoly of the business, would he not? A. Yes; that was always the Standard Oil Company, because they are everywhere.

Q. When did you begin to operate? A. 1907.

Q. Had the use of automobiles become common then? A. They were commencing to come in quite 87 generally.

Q. Then this large demand for gasoline arose. Did you not then begin to develop your business, and try to get business in different localities? A. We were in the oil business.

Q. Then you can answer the question. That is a fact, is it not? A. Surely.

Q. Is it not a fact that usually before other companies had gotten into a community, that one company would practically have a monopoly of the business, for a little while? A. Well, if there was but a single company there, yes.

88 *George F. Fox, Cross*

Q. And, as a fact, back six or seven years ago, there were not so many companies in any locality engaged in business as there are now? A. No, sir.

Q. And the fact is that during late years the competition has increased in that way so that there are more people doing business than before? A. Yes.

Q. More companies? A. Yes.

Q. That is a fact, is it not? A. Yes.

Q. So that, in all this territory where you operate, there has been an increase of competition in that way in the last few years, has there not? A. Yes.

89 Q. And more companies engaged in it? A. Yes.

Q. And a great many of them are using filling stations of their own, which they control in some way or other, are they not? A. Yes, sir.

Q. You have never taken up that practice, of having filling stations, either by leasing them or establishing them yourself have you? A. We have not.

Q. You have not attempted to bring your product to the ultimate consumer yourselves, have you? A. Except through the garage man.

Q. So that you have been doing business in this way: You are selling more to the local dealers and allowing them to do the distributing, are you not?

90 A. Yes.

Q. Is it not a fact that those two methods of doing business exist in nearly every line? Some wholesalers sell to local dealers, and do not make any effort to reach the ultimate consumer themselves, that is, as a general practice? A. Yes.

Q. And other dealers, other manufacturers and dealers in products, who have worked up a brand of their own that they think the public will want, instead of using the local dealers, are establishing their own distributing agencies and bringing their product direct to the consumer? That is another way of doing business, is it not? A. Yes.

Q. The effect of this method of having so many

91

filling stations where gasoline is sold under the name of the company that manufactures it, is bringing to the ultimate consumer that product by the manufacturer himself, rather than through the local dealer; that is a fact, is it not? A. Yes.

Q. And naturally, if he develops business of his own, it will take some of it away from the local dealer, will it not? A. Yes, sir.

Q. And that is practically what has happened in your case? As you have been selling to local dealers, and not establishing a marketing system of your own to the ultimate consumer, you have lost, in certain 92
places, some of the business that you might have got if this other method had not come in? A. Yes; that is true; but we would not have lost any appreciable amount of our business in that way. The business that we have directly lost has been on account of the garages and filling stations who formerly had tanks of their own, and with which they were satisfied, being offered and furnished practically free, expensive outfits, and upon the understanding, naturally, that they would then have to quit buying from us and buy from the concern that furnished such tanks.

Q. When you speak of what has been called here a "tying agreement," do you refer to an agreement 93
where a contract is made with the user of the equipment that he must not buy anybody else's gasoline? A. I refer to the general practice that has been followed by the large companies who have been furnishing these tanks for a nominal sum, giving them free or leasing them.

Q. Have you sold refined oil in past years? A. I have sold refined oil and practically specialized in the distribution of refined oil and gasoline for the last twenty years.

Q. Do you sell it in quantity or in barrels to the last consumer? A. If you are speaking about refined

94 *George F. Fox, Cross*

oil, there is very little refined oil sold to anybody in barrels, for United States consumption.

Q. What is it sold in? A. Refined oil today is sold out of tank wagons, and it is sold in tank cars, and in some sections it is distributed in the gallon cans from house to house.

Q. Is it not sold in what you call drums? A. Not except in such sections of the country where there is no general tank wagon distribution. Refined oil you are speaking about now?

Q. Yes. A. The amount of refined oil that is sold
95 in the United States, east of the Mississippi River, except the southern states and any other sections where the roads are bad, is very small, except that distributed by tank wagon.

Q. Don't you know that in the old days when you used wooden barrels, that a great deal of oil was sold in barrels? A. Oh, yes.

Q. To grocery stores? A. But not after a tank station was established from which a delivery service could be arranged for.

Q. Don't you know that a great deal of oil is delivered yet in steel drums? A. Not where it can be delivered by tank wagon.

96 Q. Where some better method is used it is not; but it is sold in that way, is it not? A. The only way that anybody today buys refined oil for resale, other than out of a tank wagon—and by a tank wagon I mean a motor truck also—is in such cases where the roads are bad or where the towns may be beyond the delivery radius distance, and these are very, very few.

Q. Don't you know that it is sold here in New York, to the City of New York, in steel drums? A. When you speak about New York in steel drums, New York City is the only place that there is no general tank wagon delivery service in the strict sense of the word.

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Q. Don't you know that different kinds of oil that need to be kept in some container of that kind, like a steel drum, are sold and with the understanding that they will get credit for the drum when they return it? A. In some places that is done, and in other places it is sold with the understanding that you charge the man for the drum.

Q. In some places it is sold, and it is quite a common practice where the drum remains the property of the seller to be returned to him, is it not? A. Yes, sir.

98

Q. And it is necessary to sell it in some such container as that, if you are selling it by the barrel, is it not? A. Yes, sir; but, unless, as I have outlined above, there is some reason why you cannot reach the man with your delivery service, he is not going to buy very much.

Q. I do not care about the reasons for these things. I want the facts, now. Sometimes it is sold in that way, and the drum remains the property of the seller, to be returned to him; that is a fact, is it not? A. Yes.

Q. That is an old practice, is it not? A. Yes.

Q. And in some cases they bill the drum to the purchasers, but give them credit when they return it? 99
A. Yes.

Q. That amounts to the same thing, does it not? A. Yes.

Q. Because there is always credit enough to cover the value of the drum? A. Yes.

Q. Is not that a common practice in a great many instances that require a special container for the product? A. I cannot say.

Q. That the dealer furnishes the container? A. I cannot tell you.

Q. Don't you know that the milk dealers do that very thing—furnish the bottles that it is kept in until used? A. I thought you were speaking particularly about the steel drums.

100 Q. I have left that, now. A. What was the question?

(The question was repeated by the reporter.)

The Witness: Yes.

Q. And they have their name or their trade-mark blown in the bottle or printed on the stopper so that the consumer may know what grade of milk he is getting? A. Yes, sir.

Q. Don't you think that is a pretty good practice, for the public to be able to know what they are get-
101 ting?

Mr. Zechiel: I wish to object to that question. It is not specific that you mean the whole practice, or the milk bottle practice.

By Mr. Speer:

Q. I will ask him, first, about the milk bottle, and then I will ask him about the other. A. In the case of milk I should say it might be all right.

Q. Does not the public always want to know whose product they are getting, especially if it is a product where there are different grades? A. I do not think that applies to gasoline.

102 Q. I am not asking you about that. We will leave the gasoline for the moment. A. You are asking me about oil products.

Q. You know you go into a drug store and many of the products that you buy are put up in a package with the name of the maker on it, so that the public will know whose make they are getting. That is a fact, is it not? A. With some products, yes, sir.

Q. There is a difference in the grades of gasoli is there not? A. Yes, sir.

Q. And the public is interested in knowing that they are getting a good grade of gasoline? A. Yes; but

the man that buys it is more interested than the public —I mean the garage man.

Q. Why is he more interested? A. He has got his future business to look after.

Q. That is, the reason he is interested is that if he is selling this to the public, he wants a good grade to sell to them, or he will lose his trade? A. Yes.

Q. The public are just as much interested, however, in knowing they are getting a good grade, are they not? A. Yes.

Q. They are the people who are using it? A. Yes.

Q. These different companies that are in the business make certain grades of gasoline, and nearly all of them now have their trade-marks as indicating their grade and make of gasoline, have they not? A. Don't get grade confused with brand. As to brands, yes. Grades is a much wider proposition. 104

Q. Well, their brand is supposed to indicate that they are selling a certain grade, we will say, called by their names; that is a fact, is it not? A. I cannot say so.

Q. We will say a certain quality, then. Will that suit you better? A. I cannot say so.

Q. What are they putting a name on for? What does it mean, then? A. Because they wish to sell their product under a brand. 105

Q. What is the purpose of having a brand on it, if it does not indicate something? A. The purpose, in the case of gasoline, is to indicate more particularly the source of the gasoline; the source of supply of the gasoline.

Q. And it does make a difference in gasoline—the source from which it comes, does it not? A. Not necessarily so.

Q. Do not some people claim that gasoline made from some certain oil is better, and will produce more power than gasoline made from other oils? A. Do you mean the consumer, now?

106 *George F. Fox, Cross*

Q. I am speaking of the seller. A. Oh, yes.

Q. They all have a brand, and many of them a registered trade-mark under which they sell their gasoline? A. Yes.

Q. And they claim that the gasoline so made and sold, under this brand, is specially adapted for use in automobiles, do they not? A. I cannot sit here and say what everybody claims for their products.

Q. You know that some of them do that? A. I know that we claim that.

Q. Don't you know that the others advertise their
107 brands and say: "This is specially adapted for automobiles"? A. There are not so very many others that advertise their gasoline.

Q. They do not? A. No.

Q. Don't you see these names over the filling stations? A. Well, now, when you are talking about advertising, I do not mean particularly over the filling stations.

Q. What do you mean by advertising? A. Advertising means general publicity.

Q. Yes. Does not that give it publicity? A. It gives it filling station publicity so far as the brand is concerned.

108 Q. If you put it in the newspaper and advertise it under that brand, that gives it publicity, too, does it not? A. Yes.

Q. All these things give the name publicity? A. Yes.

Q. And the purpose in that is to persuade the public that this is a good brand of gasoline, which will be good for them to buy, is it not? A. Yes, sir.

Q. There is nothing unfair, is there, in that practice—for a man to develop a brand of goods and endeavor to get it to the public under that brand? A. No, sir; so far as he develops it through his own channels; but when he is going to take the garage man,

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who has been buying gasoline from some other company that has been absolutely satisfactory, and who has no complaints on that gasoline, and he is going to him, and going to give him this tank free, it does make some difference.

Q. How is competition going to develop; how is a man going to get his share of the business, if he does not in some way bring it to the public and create a demand for it? A. The garage man who got these tanks free did not worry much about that, because he did not come to any oil company and ask for the tank; the oil company was the one worrying about that 110 proposition.

Q. You don't know that yourself? You are only giving your conclusion? A. I think I know about it myself, so far as the general proposition is concerned, in the sense that the statements I am making are the result of the information that I would get from our field force.

Q. Did you never lose any customer where a tank was not loaned to him? A. Yes; but we don't lose them like we do when you loan them the tanks free.

Q. Your judgment, when this practice came in, was that it would not be profitable for you to engage in this filling station business, and you have not done so, 111 either by putting up stations of your own, or by furnishing tanks and pumps to other people? A. As I stated before about this profitableness, we figured that it would not be profitable; that we could use that money to better advantage; and, further, our business over a period of years would be a more substantial business, if we did not adopt that policy.

Q. Yes. A. And that we would be in better shape to retain such of the gallonage that did stick with us by following the proposition that we believed that there were enough garage men in the United States

112 *George F. Fox, Cross*

who figured that they were going to run their business as they saw fit.

Q. But it has turned out differently, that this system has caused a great many filling stations to be put in in every community, has it not? A. What has turned out differently?

Q. As a result of the use of these pumps and these filling stations, a great many of them have been put in, now, in every community, have they not? A. I will say that a great many pumps have been put in, yes.

113 Q. I am speaking of the whole equipment—including the tank that goes with the pump. Of course, there has to be a tank with the pump, has there not? A. Yes.

Q. When you are doing business with a garage, is it your practice to make a contract for a certain period? A. With the exception of some four or five years ago, when the practice was started by, more particularly, the Standard Oil Company, in the section where we did business, there have been no contracts made with garages for the supplying of their gasoline, either as to quantity or as to price, that, as a general policy is being pursued today by all of them.

114 Q. I am not talking about general policy. I am talking about what you do. Have you not made contracts to sell to certain garages, all their gasoline for a certain period? A. Not within the last three or four years.

Q. Do you consider that an improper practice? A. I certainly do.

Q. Do you mean to say that you have not a right when you want to work up your business, to know how much you are going to sell during the year, and to get a contract from a man as to how much you will furnish him? A. There is a difference between right and good business.

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Mr. Zechiel: I am going to object to that question as immaterial and irrelevant to the issues of this case.

Mr. Speer: I want to get an idea about the gentleman's construction of unfair practices.

Examiner McCorkle: I think the witness may answer the question.

(The question was repeated by the reporter as above recorded.)

The Witness: Do you mean legal or otherwise? You say whether we have a right to do it. Whose right?

116

By Mr. Speer:

Q. Don't you think it is a fair practice? A. I do not, for the reason that the making of that contract in such a case must carry with it two important things: quantity and price; and as the average oil marketer has no idea what the price of gasoline may be over a certain period, if it is right, it is certainly poor business judgment on his part to make such contracts.

Q. Then the reason you did not make contracts for a time is that you were afraid the price of gasoline might change, and that it might prove to be an unprofitable arrangement? That is the only objection you have, is it not? A. That would be the objection to it. I would say, if I could put a statement in there, that it is not considered very good practice by anybody, because there are no gasoline contracts covering the sale of gasoline as to either quantity or price, except where they are tied in with these filling stations or tank propositions.

117

Q. Do you mean to say gasoline is not being sold in this country every day by the quantity where a large marketer of gasoline agrees to furnish to the purchaser a certain quantity covering what he will need for, say, a year? A. And at a price?

118 *George F. Fox, Cross*

Q. Well, at a price, with a shifting price. A. I will say to the best of my knowledge; and I will say here that I think I have a right to say that I know something about it, and that there are no gasoline contracts of that kind that you mention in effect anywhere in the territory that I have outlined here, unless it is in connection with a tank or pump proposition; further, that that policy is absolutely foreign to the general practice in the oil business.

Q. What do you mean, Mr. Fox, by the expression that you used about going into a territory and developing business there? A. Going in and developing your own business, trying to get an increase in our gallonage.

119

Q. In order to do that you have to create a demand for it from the public, do you not? A. The demand is already there.

Q. There is no demand for your product until it is brought in, is there? A. No; but the demand for gasoline is there.

Q. Is it not the purpose of the companies in having a brand and using it and selling it under that brand, to create a demand for their particular product by maintaining its uniform quality so that the public will be satisfied with it? A. Yes, sir.

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Q. When a company has done that and has sold a good quality of gasoline, maintained its uniformity and created a reputation for it, it is certainly a good business practice, is it not, for them to endeavor to have their product furnished to the public under that brand? If they are not permitted to do that, what is the use in their trying to develop a reputation for their brand? What do you say as to that? A. Yes.

Q. The modern method of selling gasoline to the ultimate consumer in small quantities is through these tanks and pumping outfits, is it not? A. Yes, sir.

121

Q. And by doing so, and by having the sign upon the pump, the public are shown what brand of gasoline they are purchasing. That is the way it is done, is it not? A. Yes, sir; that is, in some cases. I would say that, taking the country over, the brand is not shown on fully as many pumps as those upon which it is shown.

Q. You think there are as many pumps that have not any brand on them as there are with the brand on them? A. Yes.

Q. In that case the dealer is not holding himself out as selling any particular brand; he sells any brand he wants to, does he not? A. He figures that he is running his own business.

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Q. Yes; and the public have to depend on him as to whether they are getting a good brand of gasoline. A. They do not have to depend on him as to whether they are getting a good brand of gasoline because if they are not getting the gasoline, there is usually some other place that they can get it.

Q. Yes; and a man driving along the road and wanting to get gasoline and not knowing this garage man has to depend upon his reliability as to whether he is getting a good grade of gasoline, does he not? A. I don't think the average automobilist—

123

Q. Now, answer my question first, and then explain it if you care to.

(The question was repeated by the reporter as above recorded.)

Q. If there is no sign up. A. Yes. I would like to add to that: Yes, but the lack of a sign does not necessarily mean that the man is going to sell poor gasoline.

Q. If you are going to have two different brands of gasoline, sold to the public as such, it is necessary, is it not, for you to have separate tanks and separate

pumps? A. But who is going to have these two separate tanks and separate pumps?

Q. I am asking you if that is not necessary. A. I do not understand your question.

Q. If you are selling two brands to the public at the same time, is it not necessary to have separate tanks and pumps for that purpose? A. Who is going to sell this to the public?

Q. Anybody. A. Do you mean the garage man—is it necessary for the garage man, in order to handle two grades of gasoline, to have two separate tanks?

125 Q. If he is going to sell them as different grades? A. Sure.

Q. Under the sign he has to have a separate tank and pump for each one, has he not? A. Sure.

Q. And there is no other way by which the product, the gasoline under a brand, can be delivered to the ultimate consumer except by having a tank and a pump for that particular brand, is there? A. No, sir.

Q. Would it not be a violation of the laws of nearly every state for a man to have a sign over his pump of a certain brand of gasoline and to sell another brand through it?

Mr. Zechiel: I object to that.

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The Witness: I don't know.

Mr. Speer: I withdraw that question.

By Mr. Speer:

Q. Instead of loaning the tank and pump to the operator of the filling station, would it not be possible for companies to create an agency there, and make the dealer their agent? A. I suppose so.

Q. And sell their gasoline through their own pump and equipment? A. Yes, sir.

Q. Is not that done in a great many places? A. Yes, sir.

Q. That has just the same effect, so far as your business is concerned, as the other method, does it not? A. No, sir. 127

Q. Why not? A. In one way you absolutely come in and take away a customer that we have, and the other way you are starting a new customer of your own.

Q. Of your own? A. Yes.

Q. Could they not go into a garage that was selling your gasoline and make arrangements with the owner to act as their agent and sell their gasoline? A. If he kept on selling ours, and he would also put in the other fellow's, we would have no kick coming. 128

Q. I am not speaking now, about whether he will continue to sell yours. I don't care anything about that. But is it not possible for a marketing company to go to a garage where you are selling gasoline and arrange with the garage man to be their agent and sell their gasoline through their pump? A. Yes

Q. And is it not done? A. Yes, sir.

Q. That has the same effect, so far as creating competition, and probably causing you to lose some trade is concerned, as if they loaned him a pump, has it not? A. If it is an exclusive arrangement for the other fellow's gasoline, yes; but that is not what is done. 129

Q. It might be that in neither case was there an exclusive arrangement, and the effect would be the same, would it not? A. No, if there is no exclusive arrangement the competition would be fair.

Q. Then if, in loaning the tank and pump, an exclusive arrangement was not made, that is perfectly fair, is it not? A. Except that, naturally, if that tank or pump were put in there at a rental of little or nothing, the average garage man would be foolish not to take the same in.

Q. And if he had business enough to justify [illegible]

130 *George F. Fox, Cross*

would sell that brand of gasoline to his customers, so long as it was satisfactory, would he not? A. Yes, sir.

Q. He could be made an agent, and that would not necessarily prevent his selling somebody else's gasoline if he wanted to, would it? A. But they are not made that way.

Q. The truth is that very few garage men have sufficient business to justify the operation of more than one pump; is not that a fact? A. I do not think the people that furnish all these tanks free thought
131 so, or they would have let him alone.

Q. You are not answering my question.

(The question was repeated by the reporter as above recorded.)

A. I say no.

Q. Then they have enough business to justify their keeping more than one pump? A. What was that previous question?

(The question was again repeated by the reporter as above recorded.)

A. The average garage man only needs one pump.

132 Q. And even if he owns his own pump, he usually is selling some particular brand of gasoline, is he not? A. If he owns his own pump, quality and service, in the long run, will secure the business.

Q. You are not answering my question. If he owns his own pump, he usually only sells one brand of gasoline at a time? A. That question could not be answered yes or no, because you take the country over and the man with the one pump will buy a great deal of his gasoline, for instance, from one concern and may buy part of it from another, and the question of quality and service in the long run will say who is going to get the major part of his business.

Q. That will induce him, in the end, to buy from

some particular company with whose gasoline he is satisfied and that gives his customers satisfaction? A. Yes, sir.

Q. So that it simmers down, in the end, that the man with the one pump is only handling one brand of gasoline, does it not? A. I could not say that it does.

Q. Would he not be a very foolish man to be buying two or three brands and mixing them? He would not know who was to blame if his customers were dissatisfied? A. He is looking out for his own business and, in the long run, the garage man cannot afford to handle anybody's gasoline unless it is all right; and 134
if it is all right, he would just as soon take it one time from one individual and then another time from another.

Q. He is not likely to keep experimenting in that way? If he has a brand that suits his customers, he is likely to keep buying it, is he not? A. Yes.

Q. So that even when he owns his own pump he is usually handling but one brand of gasoline? A. You have asked me that same question now, half a dozen different times.

Mr Zechiel: I believe he has, too. I think it has been answered a number of times, quite 135
sufficiently for the record; and I object.

Mr. Speer: He has shown an unwillingness, it seems to me, to answer.

Mr. Zechiel: I think the question is a little indefinite.

(The question was repeated by the reporter as above recorded.)

By Mr. Speer:

Q. I will add to that: That even when he owns his own pump the garage man is only selling as a rule, one brand of gasoline at a time, and continues to sell it as long as it gives satisfaction. A. I cannot say that

he does, for this reason: That if the man owns his own tank, if he has been buying the major part of his supplies from any one company, if he has an abnormal demand, and if the wagon of another company comes along, he will have no hesitancy, about buying gasoline from the other company, provided he knows that it is good gasoline, and putting it in that tank. Therefore, any distributor may have a customer who has been buying practically exclusively from him, and his account, for instance, might become such that that distributor would not supply any more mer-
137 chandise, and the garage man, in that case, would not hesitate—in fact, he would have to put in the gasoline of some other company.

Further, as very frequently happens, all oil companies run out of gasoline, sometimes not only for days but for a period of days; and during such times the garage man does not hesitate, and as a matter of fact self-preservation requires him to buy what other grade of gasoline he can get; and during such times he certainly does not take down the sign, if he has one, on his pump, of the grade of gasoline that he might have been more particularly specializing in.

Q. And he continues, you think, to sell this new
138 kind that he buys under the old brand to the public? A. Yes; and further, the chances are that if, for any reason, he should feel that the company was in any way at fault in not having kept him supplied with his regular grade of gasoline, the company that then helps him out has a very good chance for his future business.

Q. Has not this loaning of pumps resulted, in every community, in additional competition, more companies engaging in business than formerly? A. I will say it has resulted in more garages selling gasoline when they got the pumps for nothing, yes.

Q. A great many of them, if the pump was not furnished them, would not handle it at all, would they?

A. Practically all garages, of course, handle gasoline, but the furnishing of the free pumps has resulted in a great many more filling stations.

Q. Yes; and also a great many little garages that probably would not handle gasoline have these little filling stations in them? That is a fact, is it not? A. I would say yes.

Q. So that, in that respect, it accommodates the public more by having more filling stations at which they can have their wants supplied? A. I would say yes.

Q. Is it not a fact that in North Carolina, and some 140
other parts of your territory that you have had more demand for gasoline during the last year, or probably two years, than you could supply, and that you have been actually compelled to go to your competitors to get from them the gasoline with which to supply your trade? A. When you speak about North Carolina you are bringing up a condition that does not apply to some of the other states. Will you not mention some one of the other states?

Q. Let us settle North Carolina first. Answer the question as to that. A. May I have the question repeated?

(The question was repeated by the reporter 141
as above recorded.)

A. In North Carolina, there is a special grade of gasoline required, and I cannot say that our demands there have exceeded our supply to the extent where we had to buy any more gasoline outside than we would have otherwise contemplated, but I would like to ask that some other state be mentioned, where the regular grade of gasoline is sold, as the conditions in North Carolina are quite different from those in other states.

Q. Do I understand that the public there requires

some special kind of gasoline? A. Not the public, but the state laws are such that you have got to put in a special grade of gasoline.

Q. The Texas Company is a competitor of yours there, is it not? A. Yes.

Q. And has not your company had to go to the Texas Company to get gasoline from them? A. Not in the last two years.

Q. How long ago was it that it happened? A. During one year, when we could buy it from them to better advantage than we could from anybody else,
143 due to, perhaps, the fact that the tank car situation, among other things, was abnormal, and that they had a near shipping terminal, and we had the necessary tank cars to nicely handle the proposition.

Mr. Hayes: May I ask a question right there?

Mr. Speer: Certainly.

By Mr. Hayes:

Q. I may have misunderstood one answer that you made some time back, Mr. Fox. In speaking of the installation of the pumps in the garages, you spoke of an exclusive arrangement. What did you mean by
144 that? A. Practically all these pumps are put in under an absolute written or implied agreement that the party who puts them in is to have the exclusive sale to the garage man of the gasoline that goes into those pumps.

Mr. Hayes: That is all I wanted to know.

By Mr. Speer:

Q. I understand that many of these contracts which are now under investigation are not to that effect, but simply that the pump loaned is not to be used to sell the gasoline of any other company than that of the company which loans the pumps? A. That means the same thing, exactly.

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Q. But that there is no restriction upon the loaning of the pump to prevent the garage man buying other gasoline, if he wishes, as long as he does not sell it through this pump. A. If he puts in another pump?

Q. Well, he could sell it by the barrel. A. I do not want to pass on that. The agreements as made by the various oil marketing companies will speak for themselves.

Mr. Zechiel: They are on record.

RE-DIRECT EXAMINATION by Mr. Zechiel:

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Q. Mr. Fox, if you know, if you have information of this sort, about what per cent of the various retailers of gasoline own their own equipments? A. That would be a guess, but I would say up to five or six years ago they practically all owned their own.

Q. And now? A. I would say in the bigger cities—understand this would be a guess, I have no statistics—

Q. I understand. A. But I would say in the larger cities not over twenty-five to forty per cent own their equipment.

Q. And in the more rural territories? A. The furnishing of tanks free is not done so much in the rural territories.

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Q. Just answer the question as nearly as you can. A. "Rural" is pretty broad.

Q. Let us get back to a middle section and say in cities of ten or fifteen or twenty-five thousand. A. I would consider them in connection with your cities proposition.

Q. Let us get down to the town of three hundred or four hundred and up to a thousand; not above a thousand, or around about probably two thousand—if that seems to be the line that we ought to draw. A. I would say that three-fourths of the equipment is

owned by the garage man in the small outlying towns.

Q. If you know, who, of those in those small outlying towns are—if there is any difference—are likely to own their own equipment; and what parties, described in any way in which you can describe them, are likely to have leased or loaned equipment? A. I don't see where you could make any distinction. The man in the smaller town that sells gasoline is just the same as the man in the bigger towns.

Q. I am not contrasting the large and small towns; but say there are two dealers or three dealers in a small
149 place, and one has a leased equipment, and the other two, say, own their own? A. I would not want to say—

Q. If you don't know, just say so. A. I would not want to get down to detail like that.

Q. That is sufficient. What do you say about the changeability of customers, where customers own their own equipment, as compared with those who are under lease and loan contracts such as have been described and are under consideration? A. Where a customer owns his own equipment, if you give him quality and service, you can figure that his business practically is yours, year in and year out. Of course,
150 where he has got an outfit that somebody may have loaned him, your chances of getting that business, so long as the arrangement is in effect, covering the loaning of that tank—the chances are very slim, except as to the getting of the "pumps"—in cases where the party who might have supplied the pumps might be out of gasoline, or in the event, of course, of something coming up in connection with his account, or if he had complaint on the gasoline of that brand.

Q. Going back again to this previous question concerning the number of people who own their own equipment in certain areas: Does your answer apply generally throughout your whole competitive territory? A. I would say so.

Q. Do retailers of gasoline in your territory sell more than one kind of gasoline during the same interval, generally? Take the case of John Jones, for example, a garage man; on the average, is he buying and selling during the same period—one week or two weeks—gasoline of more than one oil company? A. I would say, in answer to that, that he would be selling the gasoline of one oil company.

Q. What is your experience along the same line in the garage and retail business generally? Do garages have more than one oil tank and pump through which they dispense their gasoline? A. I cannot get down to 152
a lot of detail on that.

Q. If you don't know, just say so. I am only trying to get at the fact. A. I would rather not answer that.

Q. Are there few or many agency contracts compared with the number of retailers of gasoline? Agency contracts were spoken of in your cross-examination. A. I would prefer not to make any answer as to whether they are few or many; the reason being that, having practically decided that we would not market that way, as the propositions came up, where it meant giving a man a tank or losing his busines, we immediately faced the proposition and lost his business. 153

Q. In answer to Mr. Speer, on cross-examination, you said that the effect of the lease and loan practice has been to accommodate the public because of the wider distribution of the places of retail of gasoline. I am correct about that? A. Yes, sir; but what I hesitated about that for was that I do not think that is necessary. The average man with an automobile does not wait until he is down to the last drop, and there would have been plenty and sufficient sources of supply for the average automobilist without all these pumps that were put in because people could get them for little or nothing.

154 *George F. Fox, Re-direct*

Q. As a matter of fact, the rural distribution of gasoline and oil tanks and pumps for the accommodation of the public, as compared with the city distribution of those facilities is far less, is it not? A. I would say so.

Q. And it has not been your experience in the smaller towns that there is a lack of distributing centers of gasoline to accommodate the public? A. No, sir.

Q. You testified also, on cross-examination, that in certain areas your business has been curtailed. What
155 did you mean by that? A. I meant that naturally wherever we had customers who had bought from us, and they usually were the larger ones, when they were approached by some competitor with the tank proposition, if we would not loan them the tanks—and we would not—I meant the direct loss of that gallonage.

Q. In that respect, have you lost approximately all your business within any particular area, because of that preference, or has that been scattered? A. We could pick out some few centers where we could say that we practically do not today sell a single garage man, where we did, at one time, have a nice business.

Q. Was the decrease in your business there due to
156 this practice? A. Oh, absolutely. I want to say right here, in speaking about volume of business, my statement that our business had increased, I do not mean that it had necessarily increased in the places where this practice has been followed, but I mean that our total business had increased, despite this policy, which meant that when you lose it in one place, you have got to get it in another.

Q. Speaking with respect to the North Carolina situation, how does that differ from the ordinary situation? A. You mean as to the quality of the gasoline?

Q. No; the competitive effect of this practice. A. I know of one town in North Carolina where, when

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we went in there, I would say ten years ago, we secured a fair volume of business, which has gradually dwindled down to where I think we, today, have practically nothing in the way of business with the garage men.

Q. Do you know why? A. On account of the giving of these tanks.

Q. You are also engaged in the sale of lubricants? A. Yes, sir.

Q. Does the leasing and loaning of oil tanks and pumps through which certain portions of a retailer's gasoline business is tied to a particular oil company 158
affect, in any way, the sale of your lubricants and other supplies at that particular garage? A. There again, I think the contracts that have been made—and you surely must have some of them—will cover that proposition; because in some of them my opinion is that the matter of lubricating oil is covered.

Q. Disregarding any question as to whether or not the contract might cover that proposition, I am asking you only for the fact as you have experienced it, as to whether or not it does have an effect upon it. A. In a good many places it is made a condition that the customer must buy his lubricating oil from the concern that has furnished him the tanks. 159

Q. Even granting that it might be a condition of the contract, still I can see how somebody might violate the contract; so I am asking only for the fact—whether there was such a condition in the contract or whether there was not. I am asking whether or not the effect of these lease and loan contracts about which you have testified here all morning—whether or not that has had an effect on your sale of general lubricants to the garage under such contract? A. I would like to answer in this way: It certainly has an effect on the sale. I do not want to say, again, about our own particular business.

160 *George F. Fox, Re-cross*

Q. What is the effect? What is the general result? A. It would have the effect of lessening the opportunity of anybody else selling lubricating oil in there.

Mr. Zechiel: That is all.

RE-CROSS EXAMINATION by Mr. Speer:

Q. I presume it is just about the same as if you, without any contract, or without loaning the pump, by giving the man good gasoline had gotten him to take
161 from you; I suppose that it would give you a little advantage in selling him lubricating oils? A. Yes; but you have a big advantage when you come in there and make the fellow buy your gasoline.

Q. He does not have to. He can take that pump out any time, can he not, under the contracts? A. He can; but he does not.

Q. And somebody else is always ready to put one in, if he is dissatisfied? A. Well, they don't take them out.

Q. That must be because they are satisfied with the grade of gasoline that is being furnished to them. A. No; my own candid opinion is, after they are in there, they are afraid to take them out.

162 Q. Is it not a fact that a company selling its gasoline that way to the public under a brand is not going to sell poor gasoline, or it will injure its reputation? A. I don't know. I would say if they had their own facilities in there, and had the business absolutely tied up, they would be more likely to sell inferior gasoline than they would if they had to take their chance on getting business.

Q. In these places where you say you have lost business, as a matter of fact, there are more companies doing business there now than there were before? Other people are doing business instead of you? A. I do not say so.

Q. Well, there is competition? A. Yes; but competition does not necessarily mean—if you get new competition it does not necessarily mean that he is going to take your trade. Let him take the other fellow's.

Q. But in these particular cases they took your trade? A. Yes; but they never took it unless they bought it, by giving them these tanks.

Q. What I want to get at is that there are other companies there competing just the same. A. Yes, but competition is the life of trade. Where there is competition, there is busniess. 164

Q. Surely. A. Where there is business, if you go after it right, you can get it.

Q. Where these little filling stations are established, so many of them in different towns and by different companies, does not that give the consumer the right to choose which brand of gasoline he wants? A. These pumps are not put in with the idea of helping the consumer; the pumps have been put in with the idea of selling the gasoline.

Q. Certainly. The man who puts them in and who is selling under a brand, is trying to get his gasoline to the public, is he not? A. Yes, sir.

Q. And he wants to establish a reputation for it, 165
and to have a permanent business, does he not? A. Yes.

Q. And that is what you are trying to do with your methods—to have a permanent business? A. Yes.

Q. Nobody wants to go out and spend money and develop a community unless he is going to satisfy the people and get his product sold? A. You are all right on your proposition; but you are bringing in the consumers part. You are wrong about what the consumer is thinking about these filling stations.

Q. He is not objecting to them, is he? A. I have never seen anybody send a petition in to our office:

Please have John Smith put a filling station in somewhere. I cannot get gasoline of the kind I want. There are not enough garages here to sell it.

Q. It looks as if the oil men were doing business without being requested—they are pushing it themselves? A. You have got to push it, I say.

By Mr. Hayes:

Q. Does the character of the gas the garage man carries, Mr. Fox, depend greatly upon the demand of his customers? A. Well, we will put it this way—

167 Q. Just put it my way if you can. A. What was the question?

(The question was repeated by the reporter.)

A. No, sir; the garage man sells the grade of gasoline that he can usually be prevailed upon by the oil company that may be successful in getting his business to buy.

Mr. Burdeau: I got the impression from your answer that you meant the ultimate consumer was not particular as to the brand of gasoline he got, if it was good.

The Witness: I would not just say that. I would

168 say the garage man does not know so much about what the consumer wants. He is going to sell what gasoline he has bought.

By Mr. Nesbitt:

Q. I understood you to say, a while ago that there was some locality in North Carolina where, because of this practice of leasing the pumps and tanks at a nominal rental, you were required to withdraw, practically; that the business was practically nil there; was that true? A. Yes.

Q. I want to ask you the question again: Is it not true that during the last two years in the State of

North Carolina the requirements of your trade have made a greater demand upon you for gasoline than you were able to supply? A. I tried to answer that question before. I am not here to disclose any of our own family affairs. We buy gasoline that goes into North Carolina, and we buy gasoline that goes into practically every state in which we operate, and there has never been a time when we could not have supplied all the gasoline that we could have sold through our channels in North Carolina.

Q. You had a market for every drop of gasoline that you could supply in that state? A. No; I will not 170
put it that way. I say we could have supplied all that might have been demanded. In other words, we could have taken care of a much larger volume of business than we did.

Q. Had you had the gasoline? A. No. We could have gotten the gasoline, had we had the business.

Q. I will put that question to you again: Is it not true that during the last two years, in the State of North Carolina, your trade has made a greater demand on you for gasoline than you were able to supply, of your own? A. Get out of our own; because I start out with the proposition that we buy, the Indian Refining Company buy gasoline. We could have 171
bought additional gasoline for North Carolina, just the same as we could have in any other state.

Q. Have you not bought additional gasoline in North Carolina from your competitors, and sold it in North Carolina during the last two years? A. What do you mean by "competitors"?

Q. People who were marketing, the same as you are. A. A lot of marketers are not competitors. Today we get all the gasoline we want for shipment into North Carolina. We buy it, and we do not buy it from a competitor. There are a lot of refiners in the business that are not competitors.

172 *H. E. Mills, Direct*

Q. That was the very point I was asking you about. Is it not true that in North Carolina in the last two years you have bought from your competitors to supply your trade? A. To get down to the competitive part, I think the competitor came to us to buy his gasoline three years ago. We did not go to him.

Q. Did you buy it from him? A. Yes; about three years ago.

Examiner McCorkle: Is there anything further?

173 Mr. Nesbitt: That is all.

(Witness excused.)

Whereupon, at 1:10 o'clock, P. M., a recess was taken until 2:15 P. M.

After recess.

H. E. MILLS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

174 Q. State your name and address, please. A. H. E. Mills, Syracuse, New York.

Q. With what concern are you affiliated? A. C. E. Mills Company, Syracuse and Johnstown, New York.

Q. What is your position? A. I am president.

Q. How long have you been associated with that company? A. Twenty-four years.

Q. Did you have any oil experience prior to that time? A. No.

Q. During that time of twenty-four years, what has been your position with the company, or positions, if you had several. A. Bookkeeper, salesman, purchasing agent—everything down the line to chairman of the Board.

Q. At the present time what is the general territorial extent over which your company does business? A. Albany, Rochester, north and south to the state line of New York State, not including Rochester; we do not go into Rochester.

Q. Not including Rochester? A. No.

Q. About how much of New York does that cover? A. Better than half.

Q. Generally the central portion of New York, the central half of New York? A. Yes.

Q. Who are your competitors? A. At every particular point, or throughout the territory? 176

Q. Generally throughout the territory. A. We have the Standard Oil Company of New York, the Indian Refining Company, the Crown Oil Company of Syracuse, William H. Hall, the Onondaga Oil Company; there are one or two others that carry lubricating oil in carload lots, that do not enter into this proposition.

Q. I did not ask you what your general line of business is. A. We handle all kinds of petroleum products; also animal, fish and vegetable oils.

Q. In connection with your business do you handle what is commonly known as the curbstone pump? A. Yes, sir.

Q. Do you buy and sell the curbstone pump and the 177 outfit, generally, to your customers? A. We have, but that is the exception.

Q. Do you in connection with your business, lease or loan such equipments to your customers? A. I am sorry to say that we do.

Q. Is that true throughout your whole competitive area? A. No; some of the companies do not.

Q. I mean, with respect to your business. You lease and loan throughout your whole area generally? A. No; only within a radius of twenty miles of Syracuse and within a radius of about twenty miles of Johnstown.

178 *H. E. Mills, Direct*

Q. What is your practice in that respect—a leasing proposition, or loaning, or a condititon of sale, or what? A. Our proposition is to sell the man the outfit, if possible, at cost or plus a small charge for carrying, say five or ten per cent.

Q. In case you cannot sell, then what is the practice? A. Then we install them on a dollar a year rental basis.

Q. And in those cases you retain title to the equipment, I suppose, do you? A. We do.

Q. In a general way, of the pumps that you handle,
179 that you place with customers, what per cent of them to you lease or loan? I take it that it is all a lease proposition. What per cent of them do you lease and what per cent, approximately, do you sell outright? A. Probably ten per cent straight sales, and ninety per cent leased.

Q. You say you do not lease throughout all your territory but confine the leasing to certain localities? A. Yes, short hauls that we can reach by tank wagons.

Q. What is your reason, if you have any, for not leasing in the entire area? A. We do not have the proper terminal facilities to serve the outside areas. We would have to have more stations, more tank car
180 storage.

Q. If I may ask, just how do you conduct your business in other places than those where you do this leasing busines, with oil tanks and pumps? A. The other proposition is lubricating oil.

Q. Then it is a fact that you do lease and loan oil tanks and pumps wherever you sell gasoline? A. Yes, sir.

Q. How long have you been engaged in the practice of leasing and loaning oil tanks? A. Less than five years.

Q. Had you sold such equipments prior to that time? A. We had; and since.

Q. What was the occasion of entering on the business practice of leasing and loaning oil tanks and pumps? A. There was simply a competitive condition created that we were compelled to meet.

Q. Will you go into that in more detail and describe the whole situation—what you did. A. Our customers came to us and stated that other companies wanted to install pumps and tanks for them. They had been customers of ours, with a small outfit, and they wanted more storage, as the motor car production increased, and they did not feel obligated to go to that expense themselves when they could get them for one dollar a 182
year rental; so there were so many of those propositions put up to us that, after a time, we had to get into it ourselves. We turned it down for a year or a year and a half. Eventually we came to it.

Q. Prior to the time that you entered on the practice of leasing and loaning your equipments, had you lost any customers because of refusal to lease and loan for a nominal consideration? A. That is a hard fact to determine. I would say yes.

Q. Would you say that you had lost a few or many such customers? A. Maybe fifteen or twenty per cent of our customers.

Q. What is your experience in your territorial area 183
generally as to the number of oil tanks and pumps that are installed under leasing contracts, and those that are installed under direct sale, outright sale? A. I reckon that seventy-five to eighty-five of the pumps are on a leased basis.

Q. Does that same per cent hold true of all your territory quite the same in the congested areas, that is of the larger cities, as in the rural territory, or is there a generally different per cent of leased pumps? A. I think it is pretty much the same proposition.

Q. So that, in a small town of three hundred or four hundred, there is just as large a per cent of leased pumps as is in a town of forty thousand or fifty thou-

sand or one hundred thousand? A. More so in per cent in some towns where there is real keen competition.

Q. Do you find it in your experience to be true that where there is keener competition there are more leased pumps than in a territory where there is not such keen competition? A. Yes.

Q. In connection with your business do you have occasion to visit the individual retailer's establishments of your customers? A. Spasmodically; I do not make a practice of it.

185 Q. But you have been over the territory in that individual sort of way, coming in contact with the garages? A. Yes; we have men working continuously who are reporting to our sales manager, and I will get it through him as to the local conditions.

Q. In that respect, what is your experience with these retailers of gasoline; do they generally have installed more than one oil tank and pump equipment, or not? A. The large garages in Syracuse, for illustration, the largest one, has three, and the second largest one has two, and so on down to one for the smaller fellow.

Q. Then you would say that in the larger centers,
186 the larger distributing retailers frequently have more than one such equipment? A. They do in our town, yes. In Johnstown, New York, they do not.

Q. What is the fact about Johnstown? A. Johnstown is a one tank proposition. Of course that is a smaller town.

Q. You mean to say, by a one tank proposition, that a garage, or any other distributor, usually has but one pump and tank? A. That is it.

Q. And that uniformly the small retailers have just one equipment? A. That is the rule. There are some exceptions.

Q. Now, those larger garages at Syracuse, where

they have more than one tank and pump equipment, do they own those equipments, or are they a lease and loan proposition? A. Those two large propositions both own their own outfits.

Q. Do you know in any case where there are leased or loaned outfits where there is more than one in a single distributing center? A. Yes.

Q. Speaking with respect to those cases: Are they leased and loaned from more than one oil company, or from one oil company only? A. They are leased by two.

Q. Who are the companies in those cases? A. The 188
Standard Oil Company of New York and ourselves.

Q. Under what conditions did you place your pump with the company you are referring to? A. We first tried to sell it. We had the sale all consummated, we thought, and the other fellow came along and, to use a slang expression, I will say he "spilled the beans"; and then we had to put up the proposition of a dollar a year rent.

Q. I understand what the expression "spilled the beans" means generally, but not in this particular connection. Will you explain it? A. Well, he came along with his tank leasing proposition, at one dollar a year, and so the fellow put the proposition up to us: 189
"Here, I am not going to buy a tank of you, and pay you $300 or $500. I don't have to. We can lease a tank and pump, and have it installed free to us, for one dollar a year rental. If you want to put us in a tank and pump on the same proposition, all right, go ahead, and I will give you your choice of location." So we told him that we did not think we cared to do that; but afterwards we changed our minds.

Q. Afterwards? Was that after he had installed the Standard Oil pump or before? A. No, that was a week or two after we had first talked with him, the garage not having been completed.

190 *H. E. Mills, Direct*

Q. Do you know what was the occasion for your changing your mind? A. Conditions were such that we had to do it. That was all. I want to explain, somewhere in my testimony, about why we refused to put these in for so long—some views on that, wherever, you want me to put them in.

Q. Here is a good time to put it in now. If there was any reason why you refused, for a year and a half, to put in these equipments, and finally changed your mind, you may state it. A. Our idea was that the average filling station, or curb pump, if you please, or
191 outfit, does not put through to exceed thirty thousand or forty thousand gallons of gasoline per annum. It, therefore, would take four to five years, with the net profit we would make on the gasoline business, before we would have our investment back in the way of a profit; and we have always felt that it was a pretty far-fetched proposition, and that we should not have to really pay a man for the privilege of doing business with him. In other words, we were doing business on small capitalization, and we might go as far as we have, which was as far as we could go, and then have to quit; and the fellow with the big pocketbook could go on indefinitely.

192 Q. When you speak of the proposition, you mean go on indefinitely leasing oil tanks and pumps under these conditions? A. Sure. We figured the depreciation on them, and so forth, and at the end of five years they are going bad, and at the end of ten years they are rusted out; and in the meantime, you have continually the expense of upkeep of the pump, somebody running off with the hose on the back end of the car, and the matter of furnishing new hose, and the continual expense of upkeep; and it didn't look to us like we could afford to get into it very far.

Q. You say that was your opinion prior to the time that you started the business yourself. Have you

changed your mind about that in any particular, so far as the reasons are concerned, and business conditions? A. No. We still feel the same way, but we are game, we are in it and we go as far as we can.

Q. From your experience in that connection do you think that this practice of leasing and loaning oil tanks and pumps for a nominal consideration, under agreement or understanding with the lessee that he is not to use the pump for the purpose of sale of other gasoline than that of the party who leases him the pump, is a good business practice?

194

Mr. Speer: I wish to object to that as incompetent.

Mr. Zechiel: As far as I am concerned, the same general objections that were made this morning may apply.

Mr. Speer: All right.

Examiner McCorkle: Go ahead and answer.

The Witness: No.

By Mr. Zechiel:

Q. If, in your territory, your competitors were to cease this business practice, is it your opinion now that you could quit also? A. Yes. Decidedly so.

195

Q. That is all. A. I want to give you one more proposition here. I don't know whether you want it or not. If not, do not take it. I am vice president of the Independent Oil Men's Association, and we took a referendum on this proposition. I don't know whether the vote was ever reported to you or not. I can tell you something about it if you want to hear it.

Q. Over what territory, generally, do those members of the Independent Oil Men's Association do business? A. It is a nation wide proposition; that is, the United States.

Q. Does it cover the eastern territory of the United

196 *H. E. Mills, Direct*

States generally? A. Yes, sir. We have four vice presidents. The eastern territory is mine.

Q. What was the question which you say was submitted by the Independent Oil Men's Association to a referendum vote? A. They put out a referendum with regard to this tank and pump proposition, as to how many were in favor of it, and how many against it.

Q. When you say "with regard to the tank and pump proposition," you are referring to the leasing and loaning, under contracts which you have described
197 here? A. Yes; the leasing proposition on the basis of one dollar a year rent, which had been the practice in the trade theretofore.

Q. You personally conducted that investigation? A. I did not. I was one of the Board of Directors who noted the returns.

Q. You are acquainted with the whole procedure, however? A. Yes, sir.

Q. I will ask the witness what was the result of that investigation and the vote taken.

Mr. Speer: We object to it as incompetent, irrelevant and immaterial.

198 Examiner McCorkle: Were there minutes of that made on the books of the association—minutes of that vote?

The Witness: I believe so. The secretary keeps the minutes. I do not know whether he wrote them up.

Examiner McCorkle: It would be better to prove them by having the books here, I think.

Mr. Zechiel: Well, Mr. Examiner, there has been no objection made on that score by the attorneys.

Mr. Speer: I think the word "incompetent" would cover that.

199

Mr. Zechiel: I had not anticipated that Mr. Speer would take exception to it because of its veracity; but perhaps that was in his mind.

Mr. Speer: Not that I would question the veracity of the witness.

Examiner McCorkle: Without further argument, I think it is incompetent unless it is brought here through the minute books.

Mr. Zechiel: I will just reserve that question for the Washington hearing and we will take it up a little later. That is all.

200

CROSS-EXAMINATION by Mr. Nesbitt:

Q. What is the size of your company, Mr. Mills? A. You mean the capitalization?

Q. Yes. A. We are capitalized for two hundred thousand dollars.

Q. And you are doing business in central New York on a line from Albany to Rochester, both north and south of that line? A. Yes; lubricating oil, motor oil, factory oils.

Q. And your gasoline and refined oil trade is confined locally to Syracuse and Johnstown? A. That immediate vicinity, yes.

201

Q. I am not just certain what companies are in competition with your company. I wish you would name them again. Was it the Indian Refining Company, the Standard Oil Company of New York, the Crown Oil Company of Syracuse, and William H. Hall? A. And the Onondaga Oil Company.

Q. Those are the only companies? A. A new fellow came in recently and opened two filling stations, but he does not compete on tank wagon business.

Q. But there are no other competitors vieing with you there in that territory? A. I think the Texas Company came up from Amsterdam to Johnstown; but they have no station there.

Q. That is in your territory, the territory that your trade covers? A. Yes.

Q. That is the only place where the Texas Company is now doing business in the territory covered by your company? A. That is all I know of.

Q. Has your company's business increased during the last five years? A. Yes.

Q. Regularly so, from year to year? A. Yes.

Mr. Nesbitt: That is all.

By Mr. Speer:

203 Q. You gave, Mr. Mills, as one reason that you did not care to take up the furnishing and loaning of pumps, that it did not pay; that the amount sold through them was not large, and that it would take several years to get your investment back; and that in that time the pump would probably be worn out. Now, is it not a fact that, under those conditions, the operator of the pump would probably not be willing to put one in for himself, as he would have to pay for it, and as his business would be small, and it would wear out for him just as well, and would leave him at the end of a few years without any profit? A. Sure; it would probably wear out for him as
204 quick as it would for us.

Q. So that that objection, then, would have as much force to prevent his putting in a pump of his own as it would have to prevent your furnishing one? A. Yes; but he is making a larger margin on his gasoline than we are, net. He could stand that depreciation, possibly, where we figure that we could not.

Q. Probably if you furnished the pump he would be willing to accept a smaller margin than if he owned it? A. The price is the same, either way.

Q. That is, you are making the price the same? A. So is everybody else.

Q. Is it not a fact that in many cases on account

of this small amount of business which is done at these small filling stations, and on account of the expenses and the length of time in getting his money back, that many of these filling stations would not be established if the pumps were not furnished by the marketer? A. I think that is a great incentive for them.

Q. Don't you think that is a fact, that many of them would not be kept if the pump was not furnished by the marketer? A. I am not so sure on that. Some fellows have money and want to go into the garage business, and if you don't get to them before we do, we are pretty apt to sell them one for cash. 206

Q. If they thought their business justified it, of course they would buy one? A. Yes.

Q. And would sell gasoline anyhow. That would apply to a garage of considerable size, that expected to do considerable business? A. Not necessarily.

Q. Is it not a fact that many of these pumps are loaned or established at stores and places where there is not really a garage at all? A. Yes.

Q. And the amount of business which they handle is not large, and the operator, not knowing how much business he is going to do in the future, does not feel like taking a chance on making the investment, and would not put in a pump at all if one were not furnished him by the marketer? A. I think that is true of your smaller filling stations. 207

Q. You spoke about losing business that you had in certain garages on account of pumps having been loaned them by other marketers. Did those garages have pumps of their own in originally through which they were selling gasoline? A. Some of them did. They had smaller pumps. We also lost some consuming trade. We have one trucking company that is running seven or eight trucks, that came to our place and filled their cars at the curb price; they had to

drive about four or five blocks to get it. Someone put in a tank and a pump for them, and sells them their gasoline at the wholesale tank wagon market price; and they do not retail a gallon of gasoline, will not retail it. There are three or four cases of that kind in our town.

Q. There are a great many filling stations there, though—garages, are there not? A. There are.

Q. Some handle one gasoline and some another, do they not? A. Yes.

Q. So that a man can easily get, under this present
209 system whatever kind of gasoline he favors, can he not? A. Yes; he can get some he disfavors, too.

Q. You sell your gasoline under a trade name or brand, do you? A. We sell two grades of gasoline, sir. We sell export aviation gasoline, which we have handled for ten years prior to adoption by the Government. We also sell what we call our excelsior gasoline.

Q. And you sell those under your own brand? A. We do. We carry that brand throughout, on various products.

Q. And you like to have a sign up so that people will know— A. We have electric signs up on top
210 of the pumps, the same as the other fellows.

Q. Yours being a particularly good grade of gasoline, the public are desirous of getting it, are they not? A. Yes.

Q. You say that if others discontinued leasing pumps, you would also discontinue the practice? A. Yes.

Q. You figure that you would be able to hold your share of the business without establishing these little filling stations, do you? A. We do.

Q. In fact, is it not a fact that you objected to these little filling stations as a business proposition? You think they are unprofitable? A. I do.

Q. That is your real objection? A. Yes; they are an unprofitable business venture to the average oil company.

Q. You think a better business proposition is to have a service station, where you handle a larger quantity, and let the people come there to get their gasoline? A. I do. I think it is coming to that, on account of the irresponsible garage man that continually fails to pay his bills.

Q. And sells every kind of gasoline, and deceives the public; that is true, too, is it not? A. Yes.

Q. You think the people will quit going to those 212
places and will come to your station, where they know they are going to get the right brand? A. There may be some other places they can get good gasoline, too.

Q. Isn't it a fact, too, that your competitors have no stations like you have, and have nothing but these little filling stations? A. I think your question is wrong. Why do you say the large competitors? The smallest competitor we have has two filling stations in Syracuse.

Q. If this system was discontinued, they would probably compete with you in the future as well as they do now, would they not? A. Sure.

Q. You have quite a number of competitors, have 213
you not, who have no large service stations, but these small filling stations? A. You mean the curb pump proposition?

Q. Curb pumps? A. Yes; with the exception that you people at Syracuse sell the largest garage. We used to alternate that business with you month by month. This is getting into some of our own secrets up there, but this large fellow told me, a year ago, "Mills, we would like to deal with you"—

Mr. Speer: I object. I do not believe that is competent—

Mr. Zechiel: I am afraid it is going to be.

214

Mr. Speer: All right. Go ahead.

The Witness: He said, "You are a factor in the game here, and we want to give you some recognition, but," he said, "if we do not buy of the Standard Oil Company, they are going to put in filling stations."

By Mr. Speer:

Q. So that, in order to prevent their putting in filling stations and reaching the public direct, he was buying their gasoline? A. Your man was convincing
215 him that that was the best policy.

Q. Don't you think he was trying to keep them out of competition? A. Undoubtedly.

Q. They have the filling stations, have they not—the pump stations? A. Oh, yes.

Q. Notwithstanding his talk, they have curb pump stations? A. They have not any within six or seven blocks of this fellow.

Q. That is not very far, is it? A. It is when you find three or four in one block sometimes.

Q. He was afraid that if he did not buy gasoline from them, they would put in a curb station near him and sell to the public? A. Not a curb station, but
216 a drive-in station, a regular filling station.

Q. Wouldn't they have a right to do that? A. Certainly. Sure.

Q. There are some companies in competition in your territory that have nothing but these small—what you call curb stations? A. There are only three of us there.

Q. What three? A. The Crown Oil Company, yourselves and ourselves.

Q. You mentioned some other companies, I thought, that were doing some business there? A. They are doing business there but they do not have curb pumps out.

217

Q. How do they sell? A. William H. Hall has two stations of his own, and distributes from his main stations. The Onondaga Oil Company has no pumps or tanks out, except what they have sold. The Crown Oil Company sell benzol and cater to that business exclusively. They have all kinds of tanks and pumps out.

Q. Is not the point this: That the result of the establishment of these little curb stations is that they take business from the large stations that would go there if there were no curb stations? That is what it amounts to, is it not? A. I think in the long run 218
that is probably it.

Q. And by having the curb stations so convenient of access to the public, they stop at them and get their gasoline, instead of coming to your large service station? A. No, I think it is the other way, now. The service stations are getting established up that way, and the two best ones in town are put up by the Warren Oil Company, a new corporation last year there, and they are making big inroads, not only on your business, but my business. I think we have got to come to it.

Q. It costs a good deal of money to put up one of those service stations, does it not? A. That de- 219
pends on how elaborate a proposition you want to put up.

Q. Does it not pay to spend a little money and make it look attractive, and will not that draw the trade? A. Some of the larger companies have gone into that on a very large scale, very elaborately.

Q. What is your opinion about that? Isn't that a good business proposition? A. You want to make them an attractive proposition, to appeal to the public and catch their eye; but I do not think you need to put in as much money in smaller cities like we are located in as you would in New York, Philadelphia or Chicago.

220 *H. E. Mills, Cross*

Q. You do not think, however, that we ought to ask that they should not be allowed to spend so much money on their service stations, in order to draw trade? A. No. Some people advertise their gasoline in the newspapers. We never figured that we could afford to do that.

Q. You would consider that a bad business practice, would you? A. Not necessarily so, if you can afford it.

Q. Suppose a garage has a pump of its own, and is selling gasoline, and a marketer comes and offers
221 to loan them a pump; would not that lead to the establishment, in that garage of two pumps instead of one? A. Where is the second pump coming from? Are you going to put two pumps on one tank?

Q. A separate tank goes with it, to make the outfit complete. We will say a pump and equipment. When I speak of a pump I mean the entire equipment. A. Yes.

Q. Of course the tank part of it is really the most expensive part of the equipment, is it not? A. No, I don't think so. I think the pump costs as much as the tank. It depends on the size of the tank. The cost of installation is about twenty-five per cent of
222 your cost.

Q. Of course a separate pump is of no value unless you have a separate tank, is it? A. Sometimes they hook two pumps on one tank.

Q. Yes, but they would be selling the same gasoline through them both, would they not? A. They might put yours in one end and mine in the other, I don't know.

Q. That would be defrauding the public, would it not? A. Well, I don't know.

Q. Would you like them to do that with your gasoline? A. No; but we have been doing it with your tanks up there.

Q. You are willing to let ours be sold out of tanks with your label on, are you? A. You have done that, too.

Q. No man who loans a tank loans it with the intention of somebody else's gasoline being sold through it, does he? A. I don't think so, no.

Q. Is it not the purpose, in loaning it and placing it in there to furnish and develop a market for that product, under that particular trade brand? A. Yes; but if the man only has one tank and one pump, you limit him to one source of supply.

Q. Yes. A. And when you limit him to one source 224
of supply he is not free to do as he pleases. Suppose you run out of gasoline. According to your interpretation, and possibly mine, too, he would have to wait until you got some; but they don't do that.

Q. If I furnish him a tank and a pump through which he could only sell my gasoline, and he has no other, and I did not keep him supplied, isn't it likely that he would throw my pump and tank out and put in somebody else's? A. No. We have had several cases like that—some dissatisfaction, for example. For illustration, a man does not pay his bill. He has got your tank and pump leased. He owes you for a load or two of gasoline, supposed to be c. o. d., and 225
there is nobody there to sign the check or give the money. They call up the office, and the office says to leave it and get it the next time. The next time you have the same proposition. If it is out five or ten miles, you don't want to bring your load back; and you have got two loads in for him, they leave the second load. Then he gets sore at you because you try to collect the money, and he turns over and buys of us, and pays us c. o. d.; and then afterwards he goes back to you. This is on your leased tank proposition.

Q. He does that, as you might say, not openly; he does not notify us that he is selling somebody

else's gasoline through our tank? A. You will not sell him until he pays up what he owes.

Q. You think the beauty of the other system, of having him own it, is that then if he owes us a bill and will not pay it, he would go and buy from you and beat us out of our bill? A. Yes; he would hang up six or seven oil companies, if he could. He would not hesitate to do that for a moment.

Q. You think a trade practice that would permit garage men to do that is a good practice? A. I do not.

227 Q. You are advocating that he should own his own pump, so that he could switch when he wanted to, are you not? A. Sure.

Q. The result is that if he owed us a bill, and we insisted on having it paid, and would not furnish him any gasoline, he has his own pump, and he would buy from you, would he not, and not pay our bill at all? A. Yes; he would buy from me and the other fellow both, if he could.

Mr. Speer: That is all.

RE-DIRECT EXAMINATION by Mr. Zechiel:

228 Q. It is not a fact that you wish to be understood as saying that you think leasing and loaning of tanks should be done away with and your reason for it is that it enables retailers of gasoline to beat debts duly owing to some oil company that supplies gasoline? A. No; I think it is a bad practice, and an expensive practice; one not necessary.

Q. Mr. Mills, from your experience, do you think that the effect of doing away with the leasing of oil tanks and pumps, curbstone pumps and their equipments, the effect of doing away with that practice will be to drive all the gasoline business into what is commonly known as service station business? A. No

I think the leading garages of any community are bound to get a certain amount of business. The average curb filling station proposition is a joke, anyhow. At least a quarter of them are out of gasoline whenever you want any. If you go there on Sunday or a holiday and want some gasoline, they will say: "We haven't got any." And the reason for it is that they have not capital enough to do business, and the oil companies all try to get c. o. d. for their gasoline. They have storage for 550 or 1,000 gallons capacity, and the tank wagon man comes along and says: "Well, George, you had better put in 100 gal 230
lons of gasoline today," and he says, "I think there is going to be a snow storm and I don't think we will sell much tomorrow." Tomorrow is Sunday, and the sun comes out, and along in the afternoon, Sunday being a nice day, or by nine o'clock Sunday morning, perhaps, he is out of gasoline; and then he wants the oil company to work Sundays and nights and everything else to keep him supplied—which they do not do.

Q. Then it is your opinion that a certain amount of the retail gasoline business in your territory is going to be done in the future through service stations, regardless of what action the Commission may take 231
on this lease and loan proposition? A. Yes.

Q. Do you think that the action of the Commission on this lease and loan proposition will in any material way affect that business that is going to be done through the service stations? A. Eventually, no.

Q. Is it not a fact that even now, under the wide distribution of retail stations for gasoline, that a great many users of automobiles drive past these small curbstone stations and get their gasoline at the service stations? A. Yes, because they get service there. At the average pump there is nobody around to wait on them.

232 *H. E. Mills, Re-direct*

Q. Is it your opinion, or not, that the wide distribution of retail stations—I mean these curbstone pumps—the wide distribution of them, not in territorial extent but in numbers, has greatly convenienced the public in their ability to get gasoline when they run out? A. Not necessarily. For instance, there are several within a radius of two or three blocks of my residence, and I venture to say that I get a call at least once a week from some fellows who run out of gasoline and come to my house for it. I have no curb pump there.

233 Q. In your opinion, then, a large proportion of the curbstone pumps, so far as the public convenience is concerned, might be done away with, and still the public would not be inconvenienced? A. Yes. It seems to me, if the curb thing is to be followed, if they would place them on the main routes or thoroughfares instead of on the back streets and everywhere, they would get just as much gallonage, and would not need within twenty-five per cent of the pumps they have out now. I mean to say, they could cut down about seventy-five per cent of the pumps, and get the same gallonage, if they placed twenty-five per cent of them properly.

234 Q. And the public would not be inconvenienced through such a practice? A. No.

Q. You testified, on cross-examination, that you used signs on your pumps to advertise your gasoline? A. Yes; we use electrical signs, and we use road signs.

Q. And having in mind certain advantages growing out of the present system of leasing and loaning pumps, do you still say that, if it were not a competitive necessity for you to engage in this leasing method of doing business—in other words if everybody else quit it—do you still say that you would prefer not to lease and loan pumps and would not do so? A. Yes.

Mr. Zechiel: That is all.

RE-CROSS EXAMINATION by Mr. Speer:

Q. Mr. Mills, if the public does not patronize these curb pumps, managed in the way you say, where they have not gasoline half the time, how does it come that they have so taken away the business from the large service stations and from yours, too, as to make it necessary for you to put in curb pumps in order to hold your business? A. They have not. The drive-in filling station proposition is a new thing, making inroads on the curb pump proposition.

Q. Then don't you think the curb pump people ought to be complaining to the Federal Trade Commission to stop a practice that is taking away their business?

Mr. Zechiel: Now, if the Examiner please, it does strike me that that question is a little impertinent.

Mr. Speer: If you object to it, I will withdraw it, and put it in a different way.

By Mr. Speer:

Q. Don't you think, then, that these new service stations that you say are being established as a new thing, and are taking away the business—don't you think there would be as much justification to object to that as an unfair practice because it is taking away the business from the curb man, as it is for the other marketers or service stations to object because the curb man is taking away their business? A. No. The drive-in filling station man gives you service, nights, days and Sundays. Your curb proposition is an eight or ten hour proposition—if you can get it then. The idea is that there is a lot of them in the curb business today who are trying to do business on

your capital and mine, and they will not buy a thousand gallons of gasoline when you come along. They will buy one hundred gallons, and as quick as they sell that, they give you a fire department ring to come right down with some more.

Q. If you own the tank, are you not in a position to control the manner in which it is operated and the amount taken? A. I wish it were so.

Q. If they do not take sufficient to justify doing business with you, you can take the tank away? A. Sure, and somebody else will put one in.

239 Q. He will not put it in unless there is something in it for him? A. He will have to find that out.

Q. The result would be that if these curb filling stations were discontinued, then the marketers who were doing business there would have to withdraw from that territory, unless they went to the expense of putting up these expensive service stations? A. No. They could continue their curb filling stations that paid them, and those that did not they could take out, and locate them in new places.

Q. I say, if the practice was discontinued, those who are marketing their product in that way would have to withdraw from the territory, or they would

240 have to establish the large service stations, would they not? A. Not necessarily. They could sell their pumps, and the fellows that own them could operate them.

Q. That would not make any difference as to this practice—whether the pump was leased or owned by the operator, so far as the public is concerned, would it?

Mr. Burdeau: I object to that, as stating a fact, and not asking a question.

By Mr. Speer:

Q. As I understand, your objection is to this curb

241

pump, that method of distributing the product. You say that is a bad method and it ought to be done through the service stations; that it can be done better that way? Isn't that your theory? A. Yes.

Q. And it does not pay to have in these curb pump stations? A. I say there are lots of them that do not pay. Some do pay.

Q. You think they should be discontinued entirely? A. I do.

Q. And that the public would be just as well accommodated by going to the large service station?

242

Mr. Zechiel: I think there is some confusion as to what the question means, when you say "they" should be discontinued entirely. Evidently no one knows whether he is referring to the pumps or the lease contracts.

Mr. Speer: I am speaking of the pumps; the whole system of using these curb pumps.

Mr. Zechiel: That is, it makes no difference whether they are under lease or whether they are owned outright?

Mr. Speer: Yes.

Mr. Zechiel: All right. I just wanted to understand where we were.

243

(The reporter repeated the pending question as follows):

"Q. And that the public would be just as well accommodated by going to the large service station?"

The Witness: Yes.

Mr. Speer: That is what I understood. Your theory is that the whole system of distributing through the curb pumps is a bad practice and unprofitable?

The Witness: I think the whole thing is, yes. I think the lease proposition is the worst part of it.

Mr. Speer: That is all.

244 *J. W. Runyan, Direct*

Mr. Burdeau: Would you have any objection to the system of distribution through curb pumps if these various separate owners of curb pumps financed themselves, and did business independently of any assistance from you?

The Witness: I do not think so.

(Witness excused.)

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245 J. W. RUNYAN, was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address, please? A. J. W. Runyan, 4528 Chestnut Street, Philadelphia.

Q. With what concern are you associated? A. S. F. Bowser & Company, Fort Wayne.

Q. What is your position in that company? A. I have charge of several salesmen in the Pennsylvania territory.

Q. How long have you been in your present employment? A. Twenty-eight years, approximately.

246 Q. How long have you been manager over the present territory? A. Possibly about five years.

Q. What has been your business experience in the territory which you are in? Have you been manager always in that territory? A. Not always. In the five years I have, yes, in this territory; but I have filled various positions with the Bowser Company for the number of years I have been with them.

Q. Has your position been out in the field for the Bowser Company or in the home office? A. Out in the field, mostly.

Q. What is the general business method of the Bowser Company, that is, its general method of con-

ducting its business of selling? A. The sale of gasoline and oil storage systems to the trade throughout the country.

Q. How is that accomplished? A. Through salesmen.

Q. If you will describe the whole situation a little more completely? A. We have various branch offices situated over the country, and in some localities, possibly Philadelphia, for illustration, covering territory—well, the City of Philadelphia, Philadelphia County and possibly five or six other counties in and around Philadelphia; take our Albany district, and 248
they will take in a larger scope, the New England States, some of Pennsylvania, New Jersey, likewise throughout the organization, various places along that line.

Q. How are your sales effected? How do you accomplish them? A. By selling direct to the trade.

Q. What is the general trade which you solicit? A. Our trade has varied. We sell virtually any class of trade that handles oil, that has to have a pump or storage system.

Q. You are speaking of lubricating oils as well as gasoline? A. Lubricating gas, coal oils, all kinds of oil. 249

Q. You also, in that connection, solicit garages and other retailers of gasoline? A. Yes.

Q. You enter into contracts with various purchasers of your equipments? A. We have an order form, what you might call a contract. We sell the man an outfit, and he naturally signs an order, and it is sold either on our short term basis, or discount, or on a thirty day proposition, or sometimes even longer; it depends on conditions.

Q. How are your orders filled and the goods delivered? A. Just how do you mean? How we fill them direct ourselves?

250 Q. Yes. A. We have various warehouses. At Albany we have a warehouse, and some we ship direct from the home office; at San Francisco we have an office that we ship from, and various places. It depends on the location.

Q. You ship the goods to the individual customers who buy them? A. Yes.

Q. From your home office at Fort Wayne? A. Yes.

Q. What is the average value of the equipment you sell—single equipment, sold to garage men and other
251 retailers? A. It will depend on where the equipment is to be used. Sometimes it is an inside pump, and that would be a different kind of a pump than a pump on the curb, or for a filling station, or something like that.

Q. Speaking generally of curbstone pumps, what is the average? A. We sell pumps with five gallon capacity, that will draw five gallons at a stroke, or an intermediate amount, and then we sell pumps that draw a gallon at a stroke, quarts, pints and half pints.

Q. And the five gallon pump has, on an average, what selling price? What is the value of the pump and equipment—which I understand includes the tank?
252 A. The equipment plant?

Q. Yes; what does such an outfit with an ordinary five gallon pump as you describe it, sell for? A. It will approximate around six hundred dollars.

Q. And your inside pumps that you speak of? A. That will depend on the size of the tank. The price of the equipment is based on the size of the tank. It may run two barrels or thirty, or five or ten.

Q. Do you have a separate price for the tank from the price of the whole equipment? I mean, is the tank priced by itself? A. Sometimes, yes.

Q. About what part of the whole cost is the cost of the tank? A. I should say the tank will cost pos-

sibly one-third, as a rule. That depends, largely, of course, on the size of your equipment and the size of this tank sold.

Q. But on the average the tank will be about one-third? A. I should say about one-third, yes.

Q. In your experience, with your company, have you had occasion to come into personal contact with the retailers of gasoline in your territory? A. Through the garage people and store people, along those lines.

Q. What is the geographical experience in that connection that you personally have had? A. Just how 254
do you mean?

Q. Your personal contact, more or less intimate personal contact with the retailers themselves. A. I do not know just how to describe it, but along those lines we will call on a garage man, and try to interest him—

Q. I think you misunderstand the question. I will ask to have it read.

(The question was repeated by the reporter as above recorded.)

By Mr. Zechiel:

Q. I mean, is it all in Pennsylvania or— A. Oh, I 255
see. It is in various parts of the country; that is, in the twenty-eight years I have been with the firm I have covered various sections of the country.

Q. And in the last few years what has it been—say the last five or six years? A. The eastern section.

Q. Is that all over the eastern part of the United States? A. No; that would take Pennsylvania, New Jersey, the sections down through West Virginia and Maryland.

Q. In the territory over which you have had this personal experience, what is the fact—do the retailers generally have more than one oil tank and pump equip-

256 *J. W. Runyan, Direct*

ment established in one distributing center? A. It will depend on the volume of business that it does, in lots of cases.

Q. What is the general fact? A. I can cite you some cases; in Reading, Pennsylvania, for illustration, there is one dealer who has in the five gallon pump only, and his business approximated fifty thousand gallons last year, through one five gallon pump.

Q. I do not know that my question is clear. I will ask to have it read.

257 (The reporter repeated the question as follows):

"Q. In the territory over which you have had this personal experience, what is the fact—do the retailers generally have more than one oil tank and pump equipment established in one distributing center?"

The Witness: You mean individually?

By Mr. Zechiel:

Q. Yes. A. It will depend on the volume of gas he sells. If he has a large trade, and his business justifies two pumps, he will put in two pumps. If one pump will do the business, lots of times he has but

258 one.

Q. Just as a matter of counting noses, from your best judgment about it, do more have two or less have two? A. Less have two, I would say.

Q. About what is the proportion? A. I would say that eighty per cent of them have one.

Q. Of those who have two pumps, what per cent of them are selling the gasoline products of more than one oil company at the same time? A. I would say possibly half.

Q. In your experience, if you know of your own knowledge, has your company lost business because of the practice of certain oil companies of leasing and

loaning oil tank and pump equipments at a nominal consideration?

Mr. Speer: We object to the question as incompetent, immaterial and irrelevant.

Examiner McCorkle: The objection will be noted. Answer the question.

The Witness: In the territory I have jurisdiction over I would say yes.

By Mr. Zechiel:

Q. Narrate more in detail, to whatever extent you 260
can, what the effect of this practice by various oil companies has been upon your company's business. A. To speak for the entire company I could not say. For the territory that I have jurisdiction over, and which is local—I am not familiar with the other end of it; the other side I don't know, on the outside.

Q. I don't know what you mean by the "outside." A. Outside of my own jurisdiction.

Q. I am speaking only, now, with respect to your own personal knowledge and in your own territory. A. I see. I would not like to say just the amount, but there has been numbers of instances whereby we have lost business by methods of the kind you men- 261
tioned.

Q. Can you recall the occasions of the loss of that business? A. Not absolutely; that is, I cannot just go into detail on all of them; but there are some instances where our salesmen have worked with a customer to sell a customer, and the customer had been worked up to a certain point, and he would say: "Well, now, I will not place my order today, but I want to investigate a little bit," and possibly the next trip the customer would say: "I can get an outfit on a lease proposition for one dollar a year," or something like that; so we have lost out on it.

262 *J. W. Runyan, Cross*

Q. What would you say about the number of such occurrences in your territory—few or many? A. I would not like to say just what number.

Q. At any time while you have been general manager over that territory, have any of your sales organization complained of this practice as affecting their business?

Mr. Speer: I object to that as incompetent, immaterial and irrelevant.

Examiner McCorkle: The objection will be noted.

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The Witness: Yes.

By Mr. Zechiel:

Q. If you know, what has been the effect upon your sales force in your territory particularly, brought about because of this general practice on the part of oil companies leasing pumps for a nominal consideration? A. Well, it has occasioned the loss of an order.

Q. Has there been any other effect than just the mere loss of orders? A. Well, I would say that is about all. It loses us the business.

Mr. Zechiel: That is all.

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CROSS-EXAMINATION by Mr. Nesbitt:

Q. Mr. Runyan, the headquarters of your company is where? A. Fort Wayne, Indiana.

Q. You are known as a member of the sales force of that company? A. Yes, sir.

Q. About what percentage of the installations of pumps and tanks in the territory that you cover are manufactured by your company now, could you say? A. I could not, no, sir.

Q. Are there a good many of the Bowser equipments in your territory? A. Yes.

Q. Do a good many of the people who make these installations in your territory at nominal rentals purchase from your company and use your tanks and pumps? A. Yes; some do, yes, sir.

Q. Will you tell us how the sales that are made by you or your men directly, are handled; that is, after the order is booked, what is the process by which the sales are handled? A. That is, where we sell to the individual?

Q. Yes. A. We simply take an order on an order form, the order is sent into our warehouse, and it is shipped from there. 266

Q. Sent into your warehouse where? A. Albany.

Q. That is where you carry your storage for that territory which you have in charge? A. Yes.

Q. Then that pump or tank is shipped direct to the customer? A. To the individual, yes.

Q. That is, where you have solicited directly, or one of your men has, the purchase, and made the sale? A. Yes.

Q. Now, where a company is making an installation, an oil company, at a nominal rental, how is that handled as regards the sale of the tank? A. That is taken up between the oil company and the firm themselves. The salesman has nothing to do with that. 267

Q. That does not reach you or your staff? A. No, sir; I have nothing to do with that.

Q. Is this practice of installing, not necessarily under leases at nominal rentals, but are these curb stations a common thing in your territory? A. Yes, sir.

Q. And there are a great many leases, I suppose, made at nominal rentals? A. I imagine so, yes, sir.

Q. Is it your idea that there are more installations of pumps and equipments as a result of this practice than there would otherwise be? A. Well, it might be possible that there are.

Q. What is your opinion about that? What is your belief? A. I would imagine that there are.

268 *J. W. Runyan, Cross*

Q. That is, that the equipment business had been extended as a result of that practice? A. I would imagine so.

Q. And your company has gotten its share of that business, has it? A. Well, that I could not answer. I could not say just exactly about that.

Q. As far as you know that is true? A. As far as I know, yes, sir.

Q. The Bowser Company is one of the largest companies manufacturing this sort of equipment, is it not? A. Yes.

269 Q. And your business has grown all during the period that we have referred to generally that this practice has been engaged in, say for the last five years? A. Yes; our business has increased.

Q. It has extended all during that period? A. On account of more automobiles being used, more cars being used?

Q. And more stations? A. Yes.

Q. You don't know, personally, then, do you, just what channels these pumps are put in to the people at whose stations the installation is made, when they are put in by the oil companies, or when they are leased by the oil companies at a nominal rental? A. No; that

270 is handled direct by the firm.

Q. And you do not touch them in any respect? A. No.

Q. This is the only territory that you have had charge of the sales in for the Bowser Company; is that right? A. For the last five years.

Q. And during that period have the sales of your men, or made by you yourself, increased from year to year? A. Yes, sir.

Q. Regularly so? A. Yes, sir.

Q. That is, the sales made, irrespective of the sales that are made direct from Fort Wayne to the oil companies? A. The natural growth of the automobile business has made it so, yes.

Q. And it is true that the business has grown in your office all during that period? A. Yes.

Q. Then is it true that you have lost any business? And when I say, "you" I mean the Bowser Company. Could it be said that the Bowser Company has lost any business as a result of this practice by the oil companies of making installations at nominal rentals? A. There are numerous cases where salesmen have lost it, yes, sir.

Q. Your reference there is to a loss to the individual salesman? A. In his individual territory, yes.

Q. You are not referring, there, to a loss to your 272
company? A. Not to the firm's loss, but the salesmen's loss in the territory.

By Mr. Speer:

Q. As I understand, Mr. Runyan, the salesman in a territory only gets credit for sales he makes direct? A. Yes.

Q. And if the oil company is leasing or loaning pumps, or handles them and buys them direct from the company, and they are shipped in there and furnished to the trade, the local salesman does not get credit for that sale? A. He would not, if it went to a company who did not deal with the Bowser Com- 273
pany.

Q. So that in the very territory where the salesman may have lost sales, the company itself may have made other sales to make up. A. Possibly.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Do you know whether or not the Bowser Company sells oil tanks and pumps at the present time to the Atlantic Refining Company? A. I do not think they do. There may be isolated cases where they may.

Q. Your territory is wholly within the territory

274 which the Atlantic Refining Company sells? A. Yes, sir.

Q. Do you know what make of pump the Atlantic Refining installs under lease and loan contracts? A. Yes, sir.

Q. What pump is that? A. The Gilbert and Barker, designated as the G. & B.; known as the G. & B.

Q. Do you sell pumps to the Texas Company used in that territory? A. Yes.

Q. And the Gulf Refining Company; do you sell to the Gulf Refining Company? A. Yes.

275 Q. If you know, Mr. Runyan, about what proportion of the installations of oil tanks and pumps in your territory have been made by the Atlantic Refining Company and of G. & B. pumps? A. I would not like to say.

Q. You have no notion about that? A. No, sir, I have not.

Q. You do not know what per cent of the total installations in your territory are Bowser equipments? A. No, sir, I do not.

Mr. Zechiel: That is all.

(Witness excused.)

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WILLIAM F. EICHELBERGER, was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address, please. A. William F. Eichelberger, 618 Walnut Street, Allentown, Pennsylvania.

Q. What is your affiliation; with what company? A. E. F. Bowser & Company, Fort Wayne, Indiana.

Q. What is the section or portion, geographically, of Pennsylvania, over which you sell goods? A. Northampton, Lehigh, Munroe, Wayne.

Q. Those are counties? A. Yes, sir.

Q. In and about what large cities? A. Easton, Bethlehem and Allentown.

Q. Over how much territory on that portion of Pennsylvania do you do business? A. I do not get what you mean.

Q. Three miles wide by ten miles long? A. I cover the entire counties.

Q. And how much of a territory is that? A. I 278
am just trying to find out how much you cover geographically. A. Five counties.

Q. How long have you been connected with Bowser Company? A. Thirteen years.

Q. During that time have you been sales agent for the company? A. Just salesman, yes, sir.

Q. And your duties in that connection are soliciting orders for oil tanks and pumps? A. Yes, sir.

Q. What has been your experience, in a general way, in your territory, as to whether garage men have usually just one installation, or more than one installation? A. In my territory there are quite a few that have two or more; some of them have three. 279

Q. What percentage, should you say? A. Oh, well, about eighty per cent only have one pump; seventy-five to eighty per cent.

Q. And of the rest, do they sell more than one kind of gasoline at the same time? A. Yes, sir; some of them do; others do not.

Q. About how many; what per cent? A. I would say about fifteen out of twenty sell more than one kind.

Q. In connection with your business in selling oil tanks and pumps, have you ever lost sales because of the practice of oil companies of leasing and loaning

such equipments for a nominal consideration? A. Yes.

Q. Describe that in detail. A. I have lost quite a few. For instance, I have gotten inquiries, written inquiries, into the home office, and the inquiry is forwarded to me, and I call on the party, and when I saw the party and quoted them prices, they stated that they had other prices from other concerns, two or three or four, and they also had offers of putting in tanks on a loan basis at a dollar a year.

Q. When you speak of tanks, are you including
281 pumps or not? A. Outfits; I should say complete outfits, either five or one gallon pumps.

Q. Did you sell to such customers? A. Not as a rule. You might say about five per cent.

Q. Of sales, you mean? A. Yes.

Q. That you sold? A. Yes; not more than that

Q. Do you know what the ultimate outcome was in those cases, whether they all bought equipments of some other company or whether they took such equipments under lease and loan? A. Most of them under the loan proposition.

Q. How frequently has that been in your territory —just in a general way? A. Quite frequently.

282 Q. To whom do you sell your equipments when you make sales? A. Factories of all kinds, garages, general stores.

Q. Do you sell in large and small cities alike? A. Yes, sir.

Q. To grocery stores? A. Yes; we sell a number of them to grocery stores through the country.

Q. What would you say about the percent of equipments that are installed in your territory—whether or not they are under lease or loan installations, or under outright sales? A. That would be hard for me to say.

Q. If you have any impression, we would like to

have the benefit of it. A. Well, there are certain parts of the territory where there might be ninety per cent, and others only ten per cent.

Q. When you speak of those certain parts being ninety per cent, do you mean ninety per cent lease and loan? A. Lease and loan, yes.

Q. Do you know why there are more lease and loan installations in one territory than in another? A. What I referred to in a certain portion of the territory having ninety per cent, and another ten, is this: The ninety per cent would be in a thickly populated territory.

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Q. Does that mean stiff competition between the oil companies in the sale of their products? A. Yes.

Q. And the occasions where a large per cent, ninety per cent, are direct sales—they are in less highly competitive areas? A. Yes, sir.

Q. Is there any difference in those two areas as to the quality of gasoline that is sold from installations? To make the question more definite: In the instances where there are leases or loans, do you find a greater volume of business than in the territory where they are sold? A. I find in some parts of the territory where the outfits are loaned that some of them do not sell one hundred gallons a month. They are stuck in so 285
thick in some parts that if each one gets a portion of the business that goes through there, neither one of them gets very much.

Q. From your experience, do you think the public has been benefited by the large distribution of oil tanks and pumps under lease contracts in the highly competitive areas? A. No.

CROSS-EXAMINATION By Mr. Nesbitt:

Q. Mr. Eichelberger, you have been in Allentown how long, with the Bowser Company? A. Approximately thirteen years.

Q. Located there all during that period? A. No; I was located at Pen Argyle three years before going there.

Q. The installations of pumps and tanks are numerous in your territory, I understood you to say? A. Yes.

Q. Your territory has increased in business during your time in Allentown? A. Oh, yes, indeed.

Q. There are relatively as many installations of the Bowser Company there now as there were five years ago; is that true? A. Oh, yes.

287 Q. More, are there? A. More so, yes.

Q. Is it a fact that the practice of loaning or leasing at nominal rentals these installations has increased the sales made by your company in that territory? A. That I could not answer.

Q. What is your idea about it? Are there more Bowser equipments in your territory now, than there would have been if this practice had not been adopted? A. No; I think there are less.

Q. I understood you to say that the practice of loaning and leasing the equipment at nominal rental increased the number of such installations generally; that is true? A. Yes, sir.

288 Q. And increased them in your territory? A. Yes, sir.

Q. I also understood you to say that there were relatively more Bowser equipments in your territory now than there were five years ago? A. Yes.

Q. Relatively, remember I am saying. There are relatively more Bowser equipments in your territory now than there were five years ago. A. No.

Mr. Burdeau: Did he fully understand your question?

Mr. Nesbitt: I have asked it twice.

The Witness: What do you mean by that?

By Mr. Nesbitt:

Q. I mean, taking all of the installations of tanks and equipments in your territory, and then take what percentage of those equipments are Bowser equipments: is that percentage greater now than it was five years ago? A. No; I do not think it is.

Q. Is it as great? A. Those are hard questions to answer.

Q. I realize that perhaps the figures might be hard to give; but if it is a question of your trade having been affected, I think you would be able to answer them. Can you give us an answer? 290

Mr. Zechiel: If you know, Mr. Eickelberger.

By Mr. Nesbitt:

Q. Has the Bowser Company been getting its share of the business in the last five years in your territory? A. I think they have, yes.

Q. When sales are made to oil companies of Bowser equipments, they are made through some other channel than through you in your territory? A. Yes; I have nothing to do with that whatever.

Q. You do not get a commission on them? A. Yes, sir, I do. 291

Q. You do get a commission on them? A. Yes.

Q. Then any installation of Bowser equipment that is made in your territory is reflected in your pay? A. To a certain extent.

Q. You receive a less commission when the sale is made direct to an oil company? A. Yes, indeed.

Q. But in no instance where the sale of equipment is made to an oil company for installation in your territory is the negotiation through you? A. No, sir.

Q. Nor do you get a full commission on it? A. No, sir.

292 *William F. Eichelberger, Cross*

Mr. Nesbitt: That is all.

By Mr. Speer:

Q. If I understood you correctly, in quite a few cases where garages have more than one pump and tank outfit, they still sell but one kind of gasoline? A. Yes, sir.

Q. And in other cases where they have more than one pump and tank outfit, they handle different brands of gasoline? A. Yes, sir.

Q. Did I understand that all of the pumps manufac-
293 tured and sold by your firm have a capacity of five gallons? A. Oh, no; no, sir; from one quart up to five gallons; some one quart capacity; others two quarts; others a gallon, two gallons or five gallons.

Q. You cannot deliver but one gallon A. Oh, no; a pint, half pint, quart and gallon.

Q. When you speak of a gallon pump you mean it only can deliver a gallon? A. Oh, no; they can deliver a pint, a quart, half a gallon or a gallon.

Q. Up to a gallon? A. Yes, sir.

Q. Then you have others with which you can deliver up to how much? A. From a pint up to five gallons.

294 Q. Is there any difference in the price? A. Yes, sir.

Q. Are there not some pump manufacturers that make pumps that only deliver a gallon? A. I could not say.

Q. You don't know? A. No, sir.

Q. If, instead of loaning the pump, the company would make the operator their agent and allow him a commission on the sale of gasoline, own the equipment and the filling station and create an agency, that would not help you any in the sale? A. I have no filling stations in my territory.

Q. There are not? A. No.

Q. But if that was done—if the company was buying some other firm's tank and did put in that kind of a station instead of loaning the pump, and would make it an agency, and own the station and employ the operator as their agent, they still would put in the pump they were handling, and it would not help you any in making a sale, would it? A. No, sir.

Mr. Speer: That is all.

RE-DIRECT EXAMINATION by Mr. Zechiel:

296 Q. If you know, about what proportion of installations made in your territory are G. & B. equipments? A. What proportion?

Q. Yes. A. About fifty or sixty per cent.

Q. What company installs those? A. The Atlantic Refining Company.

Q. Any other company? A. No, sir.

Q. Does the Atlantic Refining Company install any Bowser equipment? A. No, sir.

Q. Do you know whether the Atlantic Refining Company installs any other equipment than the G. & B.? A. I do not.

Q. You mean you do not know whether they do, or you do not know of any case where they have? A. 297 I do not know of any case where they have.

RE-CROSS EXAMINATION by Mr. Nesbitt:

Q. When the Texas Company has made installations in your territory, or has leased installations, have they been Bowser equipments? A. The Texas Company has never installed an equipment in my territory.

Q. What companies have made installations in your territory? A. The Gulf Refining Company, the Pure Oil Company; only those two.

Q. Whose equipment did those companies install—

298 *William F. Eicheberger, Re-cross*

of what manufacture? The Bowser? A. Some Bowser and some Rapid Dayton and some Wayne.

Q. As these companies come in to compete in that territory, was not the sale of the Bowser equipment aided, increased, as a result of this leasing at a nominal rental? A. No, I do not think it was. The biggest increase in sales that we saw was before the rental ever started.

Q. The leasing in your territory has been going on for about how long? A. I presume about six years. I do not think it is longer; five or six years, I could
299 not just say.

Q. Is it your idea that there would be just as many installations of Bowser pumps in your territory if this practice were not engaged in? A. There would be more.

Q. Do you believe there would be just as many curb stations in your territory as there are now? A. Curb stations? I think there would be more.

Q. Then I understand that the experience in your territory is utterly the opposite of the experience of Mr. Runyan in his territory? A. I understood you wrong. You mean that the entire installation would be more? I understood you wrong there. No; it
300 would not. It would be less.

Q. You agree that it would be less; that there would be less Bowser pumps sold in your territory if this practice were not engaged in? A. That I could not say.

Q. That there would be less pumps, though? A. Oh, yes.

Q. You have already testified that you felt that the Bowser Company had got its share of the trade in your territory during the last six years; is that true? A. I think we have got our share, yes; not saying that we could not have got more.

(Witness excused.)

P. H. LEMEN was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address. A. P. H. Lemen, Audubon, New Jersey.

Q. With what concern are you connected? A. The F. S. Bowser Tank Company.

Q. In what general geographical territory do you do business? A. South New Jersey.

Q. How long have you been with the Bowser Company? A. Four years. 302

Q. During that time have you always been in this same territory? A. Within a county or two, practically, south of the White Morris Pike.

Q. What is your general business? A. The sale of our equipment, any equipment containing oil or oil storage systems.

Q. In connection with your business, have you ever lost sales of your goods because of the practice of oil companies in leasing and loaning such equipment for a nominal consideration? A. I have.

Q. State those facts more in detail, as to the loss of your business of that sort. A. Starting with a prospect, or an inquiry, or a lead, that you dig up yourself, you go to sell the man, and sometimes you have him sold, and sometimes you may return in a day or two and you will see the outfit on the ground from an oil company, or possibly installed, or he will tell you that he has signed a contract for the free outfit; and of course you have lost your sale. 303

Q. Has that sort of thing happened frequently, in your experience, in your territory? A. Yes, sir.

Q. Do you know any specific instances of that sort? A. Just as to leasing and sale?

Q. Yes. A. Yes.

Q. Describe it. Give the facts about it. A. That

would be the whole fact, in each case. I had a case in Collingwood, Yorkshire Village. A man called me up, and I was to meet him at four o'clock, and the Standard Oil man—I have to change my car about twice a year, so that they cannot tell who I am and—

Examiner McCorkle: You need not go into so many details.

By Mr. Zechiel:

Q. No; not quite that fine. I just want the general situation. A. When I returned at four o'clock to
305 close the deal, he had signed up for a free outfit.

Q. What is your experience, in a general way, in your territory? Do garage people have more than one installation? A. Yes, sir.

Q. Is that the common practice? A. The larger garages in my territory, nearly all of them, have two pumps, one from each company; or they may have a Bowser owned outfit, and an oil company pump.

Q. When you say one from each company, are you speaking with respect to leased equipments? A. Yes.

Q. What are those? Are there only two companies in your territory that are leasing and loaning equipments? A. Three; and there have been four.

306 Q. What are those companies? A. The Standard, the Gulf, the Texas and the Crew Levick.

Q. In your testimony as to the loss of business, as you have described it, does that apply to each of these companies? A. Yes, sir.

Q. You say that, in your opinion, in the majority of cases, the retailers of gasoline have more than one equipment installed? A. That is the larger garages. In some cases—a short time ago there was one garage that had three outfits.

Q. What per cent, would you say, have more than one installation? A. Well, I could not give you the exact figures, but I would say in my territory twenty

garages would have two outfits; twenty good large garages.

Q. In those instances where they have installed more than one outfit, are those outfits owned by the garages, or are they leased equipments? A. Mostly the two outfits are loaned, but there are cases where a man will own an outfit and have a leased outfit.

Q. Is there any general difference, geographically, in this percentage of more than one outfit installations? A. On the main highways, like the White Horse Pike, or the Sweedsboro Pike, or the Woodstown Pike, or the Burlington, you will find the large garages with 308
two outfits.

Q. In the more highly competitive area? A. Yes; but in the country territories you will only find one.

Q. To whom do you make your sales, where you sell Bowser equipments? A. If I can get there first, to commercial users.

Q. Is there any difference in the amount of gasoline, general sale of gasoline gallonage in the parties to whom you sell your pumps and those who lease and loan such outfits? A. Yes; my sales are made to the smaller users. Very seldom do I get a chance at a large user.

Q. Are your sales more confined to rural territory, 309
or do you have a general sale through the entire territory? A. You are speaking of just the gasoline sales, or any of my sales?

Q. I am talking about your sales of gasoline pumps. A. Gasoline pumps are mostly to the large farms or farm estates, like, as one, Hadden Hall Farm, or Chalfonte, where they can afford to put in their own equipments, and the oil companies do not make very often delivery; or a large furniture house.

Q. Do you sell such equipment to retailers in the more rural portions? A. Yes; that is, if we can.

Q. Does the Standard Oil Company of New Jersey install any Bowser equipment? A. No.

310 *P. H. Lemen, Cross*

Q. The Gulf Refining Company? A. Some.

Q. The Crew-Levick? A. Very few.

Q. The other company was the Texas Company? A. The Texas? They have in the past, but not so much lately.

CROSS-EXAMINATION by Mr. Nesbitt:

Q. Did you say, Mr. Lemen, that the Texas Company had not installed Bowser equipment recently in your territory? A. No, sir; they have been using the
311 Rapid Dayton.

Q. You are certain about that, are you? A. Yes, sir; I was very much disappointed in them. I went to look at a number, and found they were Rapid Daytons.

Q. Within what time have you noticed that? A. This fall.

Q. How long did you say you were located in South Jersey? A. Four years.

Q. With headquarters in Camden? A. Philadelphia and Harrisburg.

Q. Is the Bowser Company installing equipment in that territory now? A. Now?

312 Q. Yes. A. You mean outright sales?

Q. Any way. A. Yes, sir.

Q. Do you have any idea what percentage of the pump and tank equipment is Bowser equipment in that territory? A. No, sir.

Q. You have no idea what percentage? A. Not what the Bowser Company have; no, sir.

Q. Has the business of the Bowser Company increased since the time that you have been in that territory? A. I cannot speak for the firm. My business has increased, but not due to the gasoline business; it has been due to the kerosene or lubricating oil business, and not to the gasoline business, sir.

Q. To what special articles do you refer of the Bowser manufacture, when you say your business has increased through kerosene and lubricating oils? A. My business, up until September 15, was, you might say, seventy or eighty per cent lubricating oil tank business—oil filters, kerosene oil tanks and specialties, such as hose; but my people are complaining, now, that—where they got this information I don't know, but they say due to a temporary injunction they cannot get any more gasoline tanks; and I sold more gasoline tanks since September 15th than I did all year; but now my lubricating oil business has 314
fallen off, because the Standard Oil Company has promised as soon as the temporary injunction is removed that they will give them oil tanks.

Q. Mr. Lemen, is it the practice in your territory for oil companies to lease any of this equipment that is used in connection with lubricating oil and kerosene? A. The Standard Oil Company are starting it now, sir.

Q. They have not been hitherto? A. They are promising the outfits, and signing the contracts.

Q. But it has not been the practice of any of the oil companies in your territory to lease that sort of equipment, has it, at a nominal rental? A. I can- 315
not say as to a nominal rental. They are taking and signing up contracts on oil, and promising oil tanks.

Q. Have you seen those contracts? A. No, sir.

Q. Have you seen any of the contracts used for loaning and leasing equipment in your territory? A. No, sir.

Q. Then I understand that your testimony is this: That your sales of tanks and pumps for the handling of gasoline have not been affected by this practice of oil companies loaning and leasing equipment at a nominal rental. A. It has on the gasoline; yes, sir.

Q. Since when? A. Since I have been with the firm.

316 *P. H. Lemen, Cross*

Q. What part of your business is it that has been affected since September by a practice of the oil companies? A. The lubricating oil business. The gasoline business has increased.

Q. Then you are selling more Bowser equipments in your territory now? A. Yes; due to the temporary injunction that the people tell me of.

Q. What injunction?

Mr. Zechiel: He is speaking of Docket No. 85.

Mr. Nesbitt: The Indiana—

317 Mr. Zechiel: Yes; I suppose so. That is the only one I know of.

By Mr. Nesbitt:

Q. None of the companies are leasing equipment down in your territory now? A. The Standard Oil Company, I understand, are not, although I found one two weeks ago that was signed up and put in two weeks ago, since September 15th.

Q. Has the percentage of Bowser installations in your territory been as large this year as it was the year before? A. No, sir: smaller.

Q. But they have increased since September 15th?
318 A. Yes; because there are none going in by the oil companies, and I am selling them.

By Mr. Speer:

Q. It looks as if, at present, from what you say, that you have no competition? A. Except in the lubricating oil business, sir—lubricating tanks.

Q. There is no other company there selling tanks? A. Oh, they are selling tanks.

Q. They have no agents there? A. Oh, yes.

Q. And you are getting all the business, are you? A. Oh, no, sir.

Q. You are getting practically all, you think? A.

I was satisfied in the gasoline oil business since September 15.

Q. What you are getting, some other company is losing? A. This oil company business?

Q .The pump manufacturer is losing that, is he not? A. My firm was not; no, sir.

Q. I am not speaking of your firm. I say, all the sales that you make might have been made by some other company if you did not make them? A. I cannot speak for that. I am only speaking for myself.

Q. Somebody would make the sale? A. They 320
would not if the oil company was putting in tanks.

Q. The oil companies buy them from a manufacturer, do they not? A. Oh, yes.

Q. Every time an oil company puts in a tank, the oil company has bought it from the manufacturer of the tank, has it not? A. Yes; but it does not help the salesman.

Q. It helps the sale of the company whose tanks and pumps they are using, does it not? A. It might help the company, but you can take my position, as the White Horse Pike is sixty miles long, and there is one Bowser outfit on it, and about thirty-five Standard Oil. 321

Q. That is because the companies that have the equipments in there prefer to use some other tank and pump than yours? A. It might be.

Q. If you go to a filling station that has been put in by, say, the Texas Company, that has been buying and using your tanks and pumps, then you will find your tank and pump there, will you not? A. You will find the pump and tank there, yes.

Q. Any company that is handling yours, buying yours and putting them in, whenever you go to the filling station of that company, you will find your tank and pump, will you not? A. Of that one company, yes.

322 *P. H. Lemen, Cross*

Q. And those were bought direct from your company? A. Yes.

Q. Not through you? A. No, sir.

Q. And of course you lost that sale? A. Yes, sir.

Q. And that is the effect of the oil companies buying wholesale from the manufacturer—the effect of it is that the local salesman does not make that sale? A. Yes.

Q. But just as many pumps are sold? A. No, sir.

Q. Is it not a fact that there are more sold under this leasing system than there would be without it?
323 A. No, sir.

Q. Is it not a fact that more pumps are in use now than would be without this leasing system? A. There may be more of a certain make.

Q. I am speaking of the total. There are more pumps of every make in use now than there would be if this leasing system was not in force? A. No, sir; I do not believe so.

Q. You think it has not led to an increased sale of pumps? A. Not due to the leasing; no, sir.

Q. You think that without the leasing system there would be just as many pumps in use, and just as many filling stations as if there was no leasing system? A.
324 There would be as many curb stations; maybe not filling stations.

Q. There would be as many curb stations? A. Yes, sir.

Q. You heard the other witnesses say that this system of leasing was causing a great many curb stations to be established that otherwise would not be? A. That is in some districts, sir. The country districts, small grocery stores, and so on, are getting outfits that have no business for them.

Q. They are getting them, and people are getting gasoline through them, are they not? A. They are getting them.

325

Q. If this leasing system was not in force, those pumps and outfits would not be put in, would they? A. No.

Q. As a result, there are more of them being put in than would be put in if this leasing system was abandoned? A. There are more pumps gross going in, yes.

Q. Gross—that is what I mean. A. Yes.

Q. Then you admit that the other gentlemen were right? A. I am just speaking of my sales. I cannot speak of others.

326

Q. I am not talking about your sales. I am asking you about the use of pumps—whether or not this leasing system has not caused more filling stations and more pumps and outfits to be put into use than would be if it were abandoned? A. That I could not say.

Q. You don't know? A. That I could not say.

Mr. Speer: That is all.

(Witness excused.)

Examiner McCorkle: We will adjourn at this point, until 10 o'clock tomorrow morning.

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Whereupon, at 5 o'clock P. M., an adjournment was taken until tomorrow, November 21, 1919, at 10 o'clock A. M.

New York, N. Y., November 21, 1919,
10 o'clock A. M.

Met pursuant to adjourment.

Appearances as before, also Gale L. Schekter (for Brown & Williams), Morris Building, Philadelphia, Pennsylvania, appearing for Atlantic Refining Company.

328 *C. M. Carpenter, Direct*

Examiner McCorkle: You may proceed, gentlemen.

Mr. Zechiel: I will call Mr. Carpenter.

C. M. CARPENTER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address, please. A. C. M. Carpenter, Brandon, Vermont.

329 Q. By whom are you employed? A. S. F. Bowser Oil Tank and Pump Company, Wayne, Indiana.

Q. What is the general territorial extent of your employment, geographically? A. At the present time the State of Vermont and the northern part of New Hampshire.

Q. How long have you been with that concern? A. Eleven years.

Q. How much of that time has been spent in your present geographical territory? A. At different periods, I should say it would extend over four years.

Q. What is the general line of work in which you are engaged? A. Soliciting orders for oil tanks and

330 pumps, systems for handling miscellaneous oils and gasolines.

Q. You heard Mr. Runyan testify as to the manner in which such orders are taken and the business conducted? A. I did.

Q. Do you conduct your business in the same way? A. As nearly as I can.

Q. In the course of your business, have you ever lost any business for your company because of the practice of certain oil companies leasing and loaning oil tanks and pumps under what we have generally talked about as trying conditions or agreements? A I, of course, could hardly say. I felt so.

Q. What were the circumstances? A. Do you mean in a general way? That is, leading up to the cause for my assuming that I lost the business as a result of that practice?

Q. Yes. A. I have a case where an ex-salesman just left the territory and referred a prospect to me. This was the city garage at Berlin, New Hampshire, last week, and he informed me that this concern wanted to purchase two or three large tanks, five gallon pump and wheel tanks, and several lubricating oil equipments. Naturally it looked like a very flattering prospect, and I went there; and when I arrived, I 332
found that a large storage tank, that is a thousand gallon tank, was already being installed at the location. I went to the office and saw Mr. Bisson, of the city garage, and he informed me that they had decided not to do anything about the tank and pump now; that they had made arrangements with the Standard Oil Company for everything. I said: "You have not made arrangements for the lubricating oil outfits, have you?" "Oh, yes, they are going to furnish those, too." So I went out to see what I could get for my trip, and I found that they were not furnishing dry cleaning outfits, so I got a small order for dry cleaning up there. Other than that I had abso- 333
lutely nothing for the result of my trip.

Q. Did Mr. Bisson say under what terms and conditions the Standard Oil Company were furnishing them? A. Yes; they furnished them gratuitously.

Q. Has that experience been a common experience in your territory? A. At times. I had one at my home town. Do you wish me to explain?

Q. I do not care for each one in detail. I am more particularly interested in knowing how frequently that thing happened in your territory. A. In that particular territory it is happening almost every day, in a business way; because there is only one oil company operating, there is very little competition in that sec-

tion. The Texas Oil Company are operating a little bit in Rutland, Vermont, and also in Burlington, and the Gulf people have, until the war, operated in a small way up there; but the major part of the business interference is, of course, from the one company. It had entire control of the oil business. Of course our gasoline storage tank and pump business is absolutely good for nothing up there. If they now furnish lubricating oil outfits, it is discouraging for a salesman to try to get a living where the company restricts you to the Bowser line only. If we could carry side lines, of
335 course, it would give us a means of livelihood.

Q. What pump and tank was installed, or is installed, as a general practice, by the Standard Oil Company in that territory? A. The Gilbert & Barker.

Q. Have they ever installed any other pump to your knowledge? A. Not the Standard Oil Company.

Q. What per cent of the installations are G. & B. pumps in your territory? A. Ninety-five per cent in my territory.

Q. About ninety-five per cent? A. About ninety-five per cent. Prior to five years ago there was very little in that section I am speaking of.

Q. But at the present time the total per cent of all
336 installations of oil tanks and pumps used in the distribution and sale of gasoline is G. & B. equipment? A. Pardon me. I would not want to go on record as saying that in such a broad measure as that. By "at the present time" do you mean just the combination lighting post and pump, discharge pump?

Q. I am speaking of the entire equipment that is generally used in the sale and distribution of gasoline; that is, the pump and tank and other equipment in connection therewith. A. I do not think I am very far from the estimate in that particular territory, now.

Q. About ninety-five per cent is G. & B. equipment? A. I should think I would rather say eighty per cent, because there are certain sections where the Texas

people are operating some. I believe that I have seen perhaps half a dozen pumps furnished by the Texas Company within the last year.

Q. Do you know what pump was furnished by the Texas Company? A. They furnish the Bowser.

Q. Do you know what per cent of the total installations are under lease and loan contracts? A. It would be hard to say what the percentage of them is. I should say it was the total; of course I have no way of getting the accurate figures on that, but only from what it appears in one case with another.

Q. Do you know whether or not the G. & B. pump 338
was at times sold by the Standard Oil Company to the various customers? A. It used to be, before this leasing proposition went into effect.

Q. At the present time, if you know, what is the practice? A. There are very few cases where I have heard of their selling them.

Q. Would you say, then, that the majority of the installations of G. & B. pumps are under lease and loan contracts, for a nominal consideration? A. At the present time, yes, sir.

Q. In your experience in that territory, do the retailers of gasoline have installed more than one such oil tank and pump equipment in the same locality? A. 339
In very few cases.

Q. You would say that by far the majority of instances are those where there is but one installation? A. There is but one installation.

Q. To whom do you sell what equipments you do sell; to the concerns who have the largest output or gallonage, the medium or the smallest outfit, if there is any difference? A. We sell them to every one that we can, that is handling liquids of that character that we manufacture devices for; to grocery stores, hardware stores, garages, small factories and large factories, dry cleaners, drug stores. We have a specific line, of course.

340 *C. M. Carpenter, Cross*

Q. Do you sell the curbstone pump to the grocery stores and drug stores? A. If we can get there first.

Q. I mean whether or not it is a fact that you do sell them. Do you ever make actual sales to that class of trade? A. Yes; when we can develop them; we try to secure the order on the first trip. Of course there is pretty keen competition, and you have to get your business and get away.

Mr. Zechiel: That is all.

341 *CROSS-EXAMINATION by Mr. Speer:*

Q. You have sold pumps for the distributing of gasoline in your territory in the last four or five years, have you not? A. Yes, sir.

Q. Is it not a fact that your sales during the last four or five years have compared favorably with your sales before that time? A. Not in the gasoline line.

Q. In other lines? A. Very materially increased.

Q. So that your business, as a matter of fact, in the sale of pumps has increased in your territory? A. I should not say so. I should say that in that particular territory it had materially fallen off in that period. You say four or five years?

342 Q. Yes. A. I should say it had not been—well, I think I could show records where it had not been over sixty per cent in that period; because, prior to that the installation of free equipment was not practiced at all, by any of the so-called oil companies.

Q. All these pumps that are installed by the oil companies, are, of course, purchased from some manufacturer? A. Of course in that territory it is just one pump.

Q. That is a fact—all the pumps that are installed in your territory are purchased by the oil companies from some manufacturer? A. Why, certainly. They are manufactured by an oil tank or pump company.

Q. So that the loaning of these pumps is merely the disposition which the company makes of them after it has bought and paid for them? A. Pardon me, but I do not seem to just get the point of your question there. Do I understand you that the pumps are purchased from the manufacturer?

Q. Yes. A. Yes.

Q. So that the loaning of the pump is merely the disposition which the oil company makes of it after it has bought it? A. I think that you are trying to lead me away from the spirit of this thing in that question.

Q. Well, you can answer my question and then you 344
can explain it if you wish. A. As I understand it, the Standard Oil Company do not buy these pumps. They manufacture them and put them out.

Q. The Standard Oil Company of New York? A. The Standard Oil Company—the Gilbert & Barker people, owned by the Standard Oil people, manufacture these pumps, do they not, and put them out?

Q. Do you know anything about the ownership of the Gilbert & Barker Company? A. Only as I have been told.

Q. But, as a matter of fact, there is a company known as the Gilbert & Barker Company, which manufactures pumps? You know that? A. Yes. 345

Q. And that is the pump which the Standard Oil Company of New York is at the present time purchasing and using in its business? A. Yes; as I understand it.

Q. Now, the real objection— A. I thought you were conveying the idea that they bought Bowser pumps.

Q. Oh, no. Then, is it not a fact that your real objection is that they do not buy a proper proportion of their pumps from your company? A. They do not buy any from my company.

Q. If they did, then you would be satisfied? A. Not at all; because I would not sell them, you under-

stand. I am afraid you are losing sight of the salesman's standpoint.

Q. So long as they are loaned, you do not make the sale as a salesman? A. No; we get no revenue.

Q. But if they were using your pumps, your company would make the sale of the pumps? A. I am not worried about my company so much as I am about my family.

Q. Yes. Now, I get your point. Then your complaint is not that your company is being injured in its business, but your complaint is that your business as a
347 salesman is being interfered with by this loaning of pumps? A. Jointly with my firm.

Q. As a matter of fact, your company, the Bowser Company, does sell pumps direct to the large oil companies that are also loaning and placing them? A. Pardon me, but does that apply to my territory?

Q. Well, we will see about that. They are doing it? They are selling their pumps to other companies that are leasing and loaning pumps in other localities? A. That does not interest me, of course.

Q. But, I am speaking, now, of the effect upon your company. That is a fact, is it not? A. I do not know; that is for them to worry about, not for me.

348 Q. I am not talking about who is worrying about it, but I want to get in the record the fact about it. The fact is that the Bowser Company is selling its pumps to the Texas Company and other companies that are engaged in the loaning and leasing business? A. I wish they were not.

Q. Well, isn't it a fact that they are? A. I understand that they are; but, as I say, this matter in my territory is more vital to me and my family.

Q. Certainly. A. Than anywhere else.

Q. Certainly. A. And if I am to get any revenue out of this, I must either sell these pumps or leave the territory.

Q. Yes. A. Or sell something that they are not giving away.

Q. Then the trouble is, Mr. Carpenter, that this is interfering with your local sales business? A. Very materially.

Q. But so far as your company is concerned, it is selling to other oil companies, not through agents but to companies that lease and loan pumps? A. Well, yes, that are obliged to get them to meet the competition; and they have got to have them somewhere, and they do not buy them of the Gilbert & Barker people, so they have to have some kind of devices to go up 350 against this competition with.

Q. The Texas Company, you say, has put in at least fifteen pumps? A. I have been thinking, since then, and as I look over the territory I cannot seem to call to mind enough to make it fifteen; still, it may be. I would not want to be on record as giving it exactly.

Q. No; the exact number is not material. A. But it is very small compared with other sections. I will put it that way. It is very limited.

Q. The number which they have placed in this territory is very small as compared with the number which they have placed in other sections? A. I presume, from what I hear here, they must be operating 351 more than they are in my territory.

Q. But nevertheless, they have placed a few of the Bowser pumps in your territory? A. Yes; a few.

Q. And they have loaned and leased them to the operator? A. Yes, sir.

Q. And you have not made those sales? A. Naturally not.

Q. Those sales were made direct by your company to the Texas Company? A. I suppose so.

Q. And you do not get any commission on that? A. Very small recognition.

Q. And you are complaining as much against that practice, as affecting your business, as against the other

352 *C. M. Carpenter, Cross*

companies? A. Yes; from the fact that the influence is so bad. You understand that when a man can put in a pump in a territory that is, to all appearances, the very same thing as I am selling, it influences the subsequent purchaser; and of course he says: "They gave a pump to so and so. Isn't that your pump?" And you can see how damaging that would be to me.

Q. Isn't that true, Mr. Carpenter, of every business, where the manufacturer takes his goods direct to the ultimate consumer? Does not that interfere with the local salesman who may be engaged in selling
353 these goods in that same locality? A. No, sir, it is not. That is an entirely different proposition. If a tire man should go into an automobile accessory store and offer to give a man five or six tires, if he would stock their tires, it would be perfectly absurd. There would be no way for the manufacturer of tires, indirectly or directly, deriving any particular revenue as a result of that gift.

Q. Let us illustrate it. Suppose there was a firm in a town engaged in selling tires of some manufacturer on a commission basis; and suppose that some one who needed tires in that town, instead of buying from the commission man who was there locally, would send in
354 an order to the manufacturer and buy, say, a dozen tires; would not that interfere, to that extent, with the sales of the local commission man? A. Not to that extent.

Q. Would he not lose those sales? A. That would be fair competition.

Q. Would he not lose those sales? A. If he would lose those sales it would be a matter of personal equation in that case.

Q. Would he not make complaint, probably? A. Not if he was a first-class salesman. He would be a good loser.

Q. But the point I wish to make is this: That when

the manufacturer brings his product and sells it directly like that to the ultimate consumer, it takes that amount of business away from the local salesman, does it not? A. Yes; but it is fair competition.

Q. I am not talking about whether it is a fair competition. I am simply asking you if that is not a fact. A. Of course we know it is a fact, that way—if he does not get the business, the other fellow does.

Q. And in that way, when your company has sold, say, ten or fifteen pumps in your territory direct to the oil company and not through you, it is taking that many sales away from you, is it not? A. It is taking 356 more than that.

Q. Well, it has taken that many, at least, has it not? A. Yes, it has taken that many, at least.

Q. And, to that extent, it is taking, as you say, your business away from you? A. Yes; but I am thinking about the influence that those things have with the next one that I might sell, that was not quite as stiff on that proposition.

Q. Of course the other company selling a similar pump there, that takes your business away, too? A. I am not worried about him at all.

Q. Is that a thickly settled territory that you operate in, or is it rather sparsely settled? A. I believe 357 that, now, I would be safe in saying that I was looking after four hundred thousand people.

Q. It covers considerable territory, however, does it not? A. Yes.

Q. Have you any large cities? A. The largest one, I think, is about 22,000.

Q. Does the Texas Company operate in there? A. Not at all. They have a small equipment at Burlington, Vermont, and they have an agent, not a regular station, at Rutland, Vermont.

Q. Outside of that one city, the most of your territory is sparsely populated? A. Yes.

358 *C. M. Carpenter, Cross*

Q. And the Standard Oil Company of New York has gone in there and developed the business? A. It always has been there.

Q. And in order to accommodate the public, it has been putting in these pump filling stations as we call them? A. That sounds as though the poor public was thought of.

Q. I don't care what you are thinking about. It is a fact that they have done that, is it not? A. Yes; wherever they could.

Q. Of course their purpose in putting their filling
359 stations in is to sell gasoline, is it not? A. Naturally.

Q. They are establishing those filling stations at a great many places where there is very little population? A. Not filling stations.

Q. What do you call a filling station? A. Discharge station. They serve the gasoline from a predetermined measuring pump.

Q. I have not heard the word "discharge station" used before. Of course we can give these things any name we want to. What I refer to is the establishing or installing of a tank and pump for the distribution of gasoline. A. I think you mean the curbstone pump.

Q. You call it a curbstone pump? A. I don't. I
360 call it a combination lighting post and discharge station.

Q. That is what has been called here a curb pumping station, curb filling stations? A. Yes.

Q. Those are put in in little stores and places through the country, are they not? A. And large stores and garages.

Q. And large ones, too? A. And farm yards.

Q. And farm yards? A. Anywhere along the way where they think that there is a possibility of distributing any gasoline.

Q. That is the idea, and they have their trademark over these pumps so that the public will know

that it is their gasoline that is being furnished there? A. I do not think it is necessary. However, they put it on.

Q. Well, it is there? A. There is only one kind of gas sold up there, to any extent, so that it is not necessary to advertise it very extensively. It looks to me like a waste of money.

Q. The probabilities are that the people are satisfied with it or somebody else would come in and get the business away, would they not? A. If they had a chance to get in and get it. It is a pretty hard proposition to go up against. 362

Q. Is it not a pretty easy proposition to go in and put in a little curbstone pump? A. No, it is not.

Q. Is not that a much cheaper proposition than putting in an expensive service station? A. There would be no demand for service stations; they are too expensive, up in that country.

Q. There is not sufficient business? A. It would be too expensive.

Q. I say, the population there is too sparse to justify the establishment of these large service stations, is it not? A. It would not be if there was an opportunity to get in some competition, so that they could buy gasoline for less money and make it an ob- 363 ject for a man to go up there. I would not think the Texas people and the Gulf people would have much incentive to go into a territory where it was entirely one thing.

Q. Could they not put in service stations and offer their gasoline to the public? A. They could: but I should judge, from what I have seen and heard, that it would be very much more to their advantage to go elsewhere, where the conditions were better.

Q. Where they had a better chance to get business? A. Naturally. Wouldn't you think so?

Q. As a matter of fact, there is a large demand for gasoline in this country now, so that there is no

364 *C. M. Carpenter, Cross*

trouble in selling all the oil that you have got, is there?

Mr. Burdeau: I want to call attention to the fact that this is far beyond the range of any direct-examination bearing on the particular pump question. Counsel is probably making this witness his own.

Mr. Speer: That is probably true.

Examiner McCorkle: Keep in view what we are after and confine it to that as much as possible.

365

By Mr. Speer:

Q. Is it not a fact that there is more competition developing now in that territory than there has been in the past? A. It would be pretty hard to say. Of course, I don't know. The Gulf used to come up there a little but now I have not heard of their being around but very little. There has been a man over there but I have not heard of his doing any business.

Q. But the Texas Company is more active, and is beginning to develop that territory also? A. In Burlington, as I say. How much they are doing I could

366 not say. They are not, of course, putting out any pumps that I know of just at the present time, or, in fact, giving me very much assistance; all that they can; I am getting from the different oil companies all the prospects that I can, and getting all the oil for them. Where they give me a prospect for a pump, I give them the oil, and that is a practice that I make, to try to keep as pleasant relations as possible, because we ought to be very helpful to each other. That is the way we are trying to operate.

Q. And I believe you stated these ten or fifteen pumps which they have put in and loaned, and the

sale of which you did not get, had been put in during the last year? A. Oh, no.

Q. How long since they have been working there? A. I should think this would be over a period of—in fact two of them that I know of have been there all of five years, I think. It is pretty hard for me to tell where those others are. There are very few of them.

Q. Their business is increasing, however; they are developing there and doing more business than they have done before? A. I could not answer that.

Q. They are in Burlington, at least? A. I could 368
not answer that. I am not sufficiently familiar with it. There is not manifested enough for me to make an estimate from, I should not say.

Mr. Speer: That is all.

(Witness excused.)

F. C. SCHUSTER, was thereupon called as a witness and having been duly sworn, testified as follows:

Direct-examination by Mr. Burdeau: 369

Q. State your name and address, please? A. F. C. Schuster, 55 Imley Street, Hartford, Connecticut.

Q. And your business? A. Salesman.

Q. For what company? A. S. F. Bowser Company.

Q. What territory do you cover? A. Hartford and Litchfield County.

Q. With headquarters where? A. Hartford.

Q. You sell the pumps that have been described by other witnesses here? A. I do, when I can.

Q. Have you experienced any competition in your

business from the giving or leasing of pumps and tanks for a nominal consideration? A. I have.

Q. About how many instances of that kind have come under your observation in your territory? A. As to number?

Q. Yes. A. I would say, roughly, ninety per cent at the present time.

Q. Could you specify, or enumerate, three or four instances of that kind? A. Pine Meadow—Caffyn and Aspinwall, Pine Meadow. We received an inquiry from them late in the spring or early summer
371 that they were interested in an underground gasoline tank. I called on them and talked the situation over, and went outside with them and picked out a location which I thought would be very suitable for their pump; and the man owning the property happened to be out of town, and the young man, just starting in business, did not know the landlord would object to a gasoline pump. So I came back in a couple of days, and found that Mr. Chapin, the land owner, was sick in bed, so it was postponed for another day or two. I dropped in the following week and found out that they had made arrangements with the oil company for a lease proposition.

372 Q. What oil company was that? A. The Standard Oil Company.

Q. Do you know what pump was furnished under that lease agreement? A. The Gilbert & Barker.

Q. Do you know of other instances of that kind where a pump had been furnished by the Standard Oil Company? A. Yes.

Q. Without going into the details of the transaction, just give the names of two or three others? A. Bartle Brothers, of Falls Village, Connecticut. I made two or three calls there, and at my final call I found that they had signed up with the oil company for a leased proposition.

Q. Do you recall any other? A. The Barrett Hotel garage, Adams, Massachusetts. That territory happened to be open, and I made four or five calls there, and Mr. Barrett intended to lease the garage. I talked with the son, and finally talked with his father, after making three or four trips; and they signed up a lease.

Q. How long have you found that practice to be going on? A. Since 1915.

Mr. Burdeau: That is all.

CROSS-EXAMINATION by Mr. Speer: 374

Q. How much territory did I understand you cover? A. I cover Hartford and Litchfield County, Connecticut.

Q. This last place you mentioned was in Massachusetts? A. That was open territory, and I happened to be sent up there; it was territory that was vacated.

Q. That was far away from your own territory? A. Not very far; thirty or forty miles.

Q. You only mentioned three instances where you think you lost a sale by the parties deciding to lease a pump. Is that all you can mention? A. I did not 375 bring any records here with me. I suppose I might dig up a few more.

Q. And this leasing business has been going on since 1915? A. To my experience, yes, sir.

Q. Is it not a fact, Mr. Schuster, that your business, during this time, in this territory, in the sale of pumps, has increased? A. What do you mean by the sale of pumps—gasoline pumps?

Q. All kinds of pumps? A. For the discharge of gasoline?

Q. I am asking you, first, about the sale of all kinds of pumps that you are handling. Your business, as a

salesman, has increased, has it not? A. I cannot say that it has.

Q. You are at least doing as much business as you were before? A. I do not believe I am.

Q. You do not think you are? A. No.

Q. Would you not know whether your business has been increasing or diminishing in the last four or five years? A. I think it has been increasing up to the past year. The past year I think it has fallen off.

Q. Do you sell tanks for the storage of gasoline
377 separate from the pump? A. Occasionally.

Q. As I understand, the complete equipment requires a tank and then a self measuring device and a pump connected with it? A. Yes.

Q. You sell a tank separately to anyone who wishes to purchase, do you not? A. Occasionally, yes.

Q. Is it not a fact that you have sold quite a few tanks in your district separately from the pump? A. Very few.

Q. And in these cases the parties preferred to use another make of pump, but did take your tank? A. I would not say that.

Q. Well, they did take and use another kind of
378 pump? A. Every sale I have made of a separate tank, they have happened to have a Bowser tank and wanted a larger storage. That has been my experience.

Q. You never sold one to anybody who uses a different make of pump than yours? A. I do, yes.

Q. Then you have sold, in your territory, tanks to persons who were using another make of pump? A. I cannot recall that I have; but I would.

Q. Are any other companies operating in your territory in the sale of gasoline besides the Standard Oil Company of New York? A. The Gulf Refining and the Texas Company.

Q. Are they competing pretty extensively? A. I believe so.

Q. And are they not getting their share of the business? A. I do not know as to that.

Q. They are also leasing and loaning these tanks and pumps to those who will operate them and sell their gasoline? A. I believe so.

Q. Do either of those companies buy and use the Bowser pump which you handle? A. The Texas Company buys the Bowser pumps. The Gulf Company have a few.

Q. Does the Texas Company buy all the pumps which it uses in its territory from your company? A. I do not know as to that. 380

Q. So far as you know, is it not a fact that all the pumps which it puts in there are Bowser pumps? A. I am afraid you will have to go to Fort Wayne to get that information.

Q. You have seen their pumps there in your territory, have you not? A. I recognize a Bowser pump when I see it, of course. I do not know what kind of a tank is underground.

Q. The tank, of course, is buried? A. Yes.

Q. But is it not a fact that all the pumps which you have seen of the Texas Company have been the Bowser pump? A. Yes.

Q. Have you any idea how many pumps they have 381 put in in your territory during the last four or five years? A. No; I have only been in this territory since last February.

Q. Have you any idea what they have put in there since you have been there, since last February? A. I have not got the number.

Q. They are putting them in all the time, however? A. I do not know of any that have been put in during the last two months.

Q. Prior to that there were some put in that you know of? A. Yes.

Q. Those pumps were not purchased through you? A. No.

Q. Those pumps are purchased direct from your company at its manufacturing plant and shipped in to the Texas Company, and installed by them? A. Yes.

Q. And you do not get any commission on those sales? A. I get a small commission on them.

Q. But not to amount to much? A. Not a great deal, no.

Q. Do you engage in the sale of any other product or manufactured article than the Bowser pump? A. No, sir.

383 Q. You confine yourself to the sale of their pump and tank entirely? A. Exclusively.

(Witness excused.)

G. A. WILSON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Burdeau:

Q. State your name and address, please. A. C. A. Wilson, 452 Broadway, Albany, New York.

Q. What is your business? A. Sales representative
384 of the Bowser Company.

Q. How long have you been such? A. Intermittently for a period of ten years.

Q. What is your present territory? A. Generally speaking, it covers New York State east of Utica.

Q. Is your headquarters Albany? A. Exclusive of the immediate metropolitan district around here.

Q. And is your headquarters at Albany? A. Yes, sir.

Q. Mr. Wilson, are you familiar with the practice on the part of certain oil companies of loaning or giving oil pumps and tanks? A. Yes, sir.

Q. Have you, in your business, encountered cases

where that has taken place? A. Innumerable.

Q. And have you lost any customers by reason of that practice? A. Considerable.

Q. Can you just enumerate, without going into detail, but merely giving the name of instances of that kind? A. F. S. Burns, Ilion, New York; Frank Morgan, Middletown; Andrew S. Hamm, Saratoga Springs; Keyser & Embree, Schenectady; J. D. King, Poughkeepsie.

Q. Is that a complete list of all that you know, or just names picked at random? A. No, I should say not; just picked out decidedly at random. 386

Q. Did you personally visit each one of the people whose names you have given? A. Yes, sir.

Q. And had they installed a pump? A. Not the first time I called.

Q. They had not at that time? A. No, sir.

Q. They were prospects, or possible customers of yours? A. In most cases I developed them as prospects. That is a point that has not been brought out. I interested them in the handling of gasoline.

Q. And had negotiated with them for the sale of one of the Bowser pumps? A. Yes, sir.

Q. And in each case the sale fell through because they obtained a pump under lease agreement from an 387 oil company? A. Well, that "lease agreement" is so broad—

Q. Never mind characterising it. A. I could not answer it in the affirmative, because the last case I had was John D. King, at Poughkeepsie, which transaction has taken place within the past two weeks, and he has not signed a blooming thing, and has about a thousand dollars' worth of goods.

Q. He has not signed an instrument? A. No, sir.

Q. But he has the equipment? A. Yes.

Q. From what company did he obtain it, do you know? A. From the Standard Oil Company of New York.

388 *G. A. Wilson, Cross*

Q. In the other cases you have enumerated, what companies furnished the equipment in those cases? A. The Standard Oil Company.

Q. How long, to your knowledge, has this practice gone on in the territory covered by you? A. I have only been in this territory that I have specified for maybe a year and a half.

Q. And during that year and a half has this practice been pretty constant? A. Decidedly. I think it is the hottest bed in the country. Everybody thinks his is the same. But Albany is the distributing point for the
389 Standard Oil Company and naturally that has its effect.

Q. Is there any other company in that territory that gives away or leases for a nominal consideration tanks and equipment? A. There are those who would like to, and a couple who do a little.

Q. Mention any other company who does a little? A. The Texas Company and the Sinclair Refining Company.

Mr. Burdeau: I think that is all.

CROSS-EXAMINATION by Mr. Speer:

390 Q. Are there any other companies in addition to the Texas and Sinclair that are also operating in your district? A. Not that I know of, Mr. Speer.

Q. Is not the Gulf operating there? A. I know that they are operating in this district that I have outlined, but I have not observed personally any instances of any action of this character. I know that it exists, but I have not personally investigated any of the cases.

Q. But the Gulf do business? Do they sell gasoline in that territory? A. They evidently do, yes.

Q. How do they sell it? A. I don't know.

Q. Have they any service stations that you know of? A. What do you mean by service stations?

Q. Buildings in the town? A. You mean drive-in stations?

Q. Yes; where you drive in? A. Not to my knowledge.

Q. Operated by the company itself? A. Not to my knowledge. They may have.

Q. That method of selling is in vogue in many places? A. Yes.

Q. Do not all of these companies have such stations? A. I do not believe that the Texas, and I know 392
that the Standard has just recently one that I know of.

Q. Has the Sinclair any such stations? A. No, sir; not to my knowledge.

Q. Does the Tidewater sell gasoline in your territory—the Tidewater Oil Company? A. They operate through local agents.

Q. That is, instead of loaning an equipment to somebody who operates it himself, they establish an agent? A. They merely sell at wholesale, as I understand it.

Q. To their agent? A. I do not know whether they consider the man as their agent or not. 393

Q. Do they have a sign up that it is their gasoline? A. No, sir.

Q. Then they are not attempting to sell under any trade-mark or brand, so far as you know, in your district? A. They are attempting to sell the wholesaler on the basis of their high quality gasoline.

Q. But does he sell it, then, as theirs? A. No, sir; he is buying in the open market. He is not always using theirs.

Q. The Texas Company is leasing and loaning these pumps quite freely in your territory, is it not? A. No, sir; they would like to, but they are not.

394 *G. A. Wilson, Cross*

Q. Why not? A. They cannot stand the gaff. The other man is on the job first.

Q. The competition is too hot for them is it? A. The Standard Oil competition, yes.

Q. There is no law against their putting up filling stations, if they want to, is there? A. It depends on where they want to put them up. There is a law against most of them; that is, a real filling station, carload storage.

Q. I do not understand? A. A real filling station is where carload storage is provided. Most local
395 municipalities have laws prohibiting large storage.

Q. Then all companies are prevented from having that kind of station? A. Yes.

Q. So that that applies to the Standard Oil Company of New York as well as to the Texas? A. Yes, sir.

Q. How do the Texas operate? A. I do not know anything about the Texas business.

Q. I understood you to say that they did sell gasoline in your territory? A. Yes, they do.

Q. How do they sell it? A. The same as the Standard does.

Q. They loan these pumps and tanks? A. Yes, sir.
396 Q. That is what I was getting at? A. I did not get your point.

Q. Whose pump and tank do they handle? A. The Bowser Company's, and the Wayne Company's.

Q. They have been quite active, and have been putting in quite a lot of pumps in the last few years have they not? A. No; not in the territory I have reference to. I will modify that statement by this: They have been quite active, but they have not been successful in doing it in the territory I cover.

Q. But there is quite a lively competition there? A. I really do not know. I do not see why they do not get more business than they do in my territory.

Q. They are putting in pumps where they think there is sufficient business to justify it, and competing, there, in your territory, for the sale of gasoline, are they not? A. Judging from some places that they put them in, I cannot personally feel that it is because they consider those points a profitable investment, which is on the same basis as the Standard Oil are putting them in.

Q. You think both companies are using bad judgment in creating more of those stations than necessary? A. Not bad judgment. It must be good judgment—I give the Standard Oil credit for using good 398
judgment.

Q. You think if the Texas does it, though, it is bad judgment? A. No.

Q. You think there are more of these filling stations being established— A. You mean the curb pumps?

Q. Yes; you think there are more of them being established than are needed for the business of the community? A. There are considerably more than are profitable, I know.

Q. But the result of that has been that more pumps have been sold by the manufacturers and installed than otherwise would be done in that territory? A. I don't know. I have no statistics as to the number, generally 399
speaking.

Q. These extra pumps which have been put in, more than are needed, have all been made by somebody, have they not? A. Yes.

Q. And they have been sold by the manufacturer to the oil companies? A. Presumably.

Q. And these Bowser pumps that the Texas Company has put in, as you say unnecessarily, have been manufactured— A. I did not say unnecessarily any more about those pumps than I did as to the others.

Q. Of course, but you say they are all more than necessary? A. No, sir.

400 *G. A. Wilson, Cross*

Q. That applies to some of the Texas, does it not? A. I think in my territory that the Texas have no unprofitable pumps, to the best of my knowledge.

Q. You don't know that any company has an unprofitable pump, do you? A. Absolutely I do—that is, in my opinion.

Q. In your opinion? A. Yes.

Q. In your opinion they are not selling enough through those pumps to justify maintaining them there? A. Yes.

Q. In that case, of course, the operator, if he had
401 to pay and install a pump, would not put one in, would he?

> Mr. Burdeau: I object to that, as too remote and uncertain. How can a witness testify as to what some one else might or would do? It is too speculative.
>
> Examiner McCorkle: That is not material either way.
>
> Mr. Speer: We have had a great deal of opinion evidence here which we objected to.

By Mr. Speer:

Q. Is it your opinion that many of these pumps that
402 have been leased and loaned would never have been installed if the operator had to buy them and install them himself? A. Some of them.

Q. Is it not your opinion that, on account of this leasing and loaning method, a great many more pumps have been installed in your territory than otherwise would have been installed? A. Speaking of the territory generally, no.

Q. Speaking of particular parts of it, then? In some parts of your territory that is true, is it not? A. In a certain block of the City of Albany that is true, and in the next block it is not.

Q. Do you not know, Mr. Wilson, that some com-

panies instead of leasing pumps to the operator, make him their agent, own the pump, and allow him a commission for selling their gasoline? A. I don't know.

Q. Is it done in your territory? A. I don't know.

Q. You don't know whether that is done or not? A. No.

Q. You say Mr. King, in Poughkeepsie, has a pump, and has not even signed a lease for it? A. No, sir; I did not say that. I said he had received equipment. He has only received his tanks, but his pumps are promised him, and supposedly on the way.

Q. He is to have them on the leasing system? A. I 404
don't know any more than what Mr. King told me. He has signed no contract.

Q. Not yet? A. He does not intend to, he told me.

Q. He has not got his equipment all put up, has he? A. No. He has the tanks on the ground.

Q. He may be compelled to sign something before being allowed to operate, may he not? A. That is your business. I don't know.

Q. For all you know, the lease may be on the way to him to sign? A. I hardly think so, because the district manager was up there to see him personally and wanted him to sign it, and he would not. 405

Q. And the equipment has not yet been installed? A. The tanks, he told me, were installed, yes.

Q. For all you know, he may buy that equipment yet? A. It will take a salesman to sell it to him.

Mr. Speer: That is all.

By Mr. Nesbitt:

Q. Will you be good enough to tell us the arrangement under which your service to the Bowser Company is conducted? That is, are you on salary or on a commission basis only? A. Both.

Q. And your office in Albany is maintained by the

406 *G. A. Wilson, Cross*

Bowser Company? A. Not my office. I am simply a salesman working out of there.

Q. The Bowser Company maintain an office there? A. Yes.

Q. And you use that for your own headquarters? A. Yes.

Q. Are you engaged in any other business? A. No.

Q. In case of sales of Bowser pumps that are made direct to oil companies to be installed in your territory, there is a commission paid to you, some commis-
407 sion, in addition to the salary which you regularly receive from the company? A. My position with the company is peculiar. To directly answer that statement, no. I receive no remuneration from oil company business.

Q. You have heard the testimony of other Bowser agents here? A. Yes.

Q. And your own relation to the company does not correspond to theirs? A. No, sir; except that my salary is based on my production of business in the territory, and if the Texas were operating, extensively, I imagine that, as a personal affair of mine, I could see that I profited thereby.

408 Q. That is, sales directly to the Texas Company for installation in your territory would be reflected in the remuneration which you receive? A. They would be.

Mr. Nesbitt: That is all.

Witness excused.

J. P. METZLER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address, please? A. J. P. Metzler, Geneva, New York.

Q. By whom are you employed? A. S. F. Bowser Company, Fort Wayne, Indiana.

Q. How long have you been with that company? A. Not quite a year.

Q. Prior to that time what had been your business? A. Traveling sales manager for a corporation out of 410
Chicago for ten years.

Q. Not a pump company? A. No.

Q. What is the territory over which you do business, geographically? A. From Erie County, Pennsylvania, to Onondaga County, Pennsylvania. That is between Auburn, including Auburn, to almost Buffalo, except Monroe County, in which Rochester is located.

Q. Do you do business up in the State of New York also? A. This is New York State I am speaking of.

Q. Oh, it is all in New York State? A. It is all in
New York State; eight counties in New York State. 411

Q. You heard Mr. Runyan testify yesterday? A. I did.

Q. As to the general method in which he does business for the Bowser Company in his territory? A. Yes, sir.

Q. Do you conduct your business in a similar manner? A. Yes.

Q. Your sales are made in very much the same way, and your orders are solicited, are they not? A. Yes, sir.

Q. In your territory, in your experience during the last year, have you lost any business because of the

practice of certain oil companies leasing and loaning oil tank and pump equipments for a nominal consideration? A. I have.

Q. State that more in detail, Mr. Metzler, whatever your experience has been along that line? A. Well, it was rather something that was surprising to me when I joined this company, as I had not any idea of brooking the interference—

Q. In order to save our record, and to save as much time as possible, let us just confine ourselves to the facts? A. There are very few oil companies ope-
413 rating in my territory with any degree of satisfaction, I might say. The only company that is installing pumps is the Standard Oil Company, aside from just a very few pumps during the year that have been installed in my territory by some minor oil companies.

Q. When you speak of the Standard Oil Company, you mean the New York corporation? A. The Standard Oil Company of New York.

Q. What other oil companies are doing business in your territory? A. That is really represented there, but not doing much business, the Warren Oil Company, Kendall Refining Company, Onondaga Oil Company, Standard Oil Company, the Weeks Oil Com-
414 pany, Fay C. Adams, or what is known as the Corn Planters Refining Company.

Q. Would you say that, so far as you know, none of the other oil companies that you have enumerated except the Standard New York corporation lease and loan such equipments? A. Well, yes, they are, but in such a minor way; there have been so few that it has not been worth taking notice of in my territory, of any other pumps being installed but the Gilbert & Barker.

Q. And the Gilbert & Barker pump is being installed and has been installed by the Standard Oil Company? A. Yes.

Q. Do you know whether or not the Standard Oil Company of New York in your territory has installed any other make of pump than the G. & B. pump? A. Not to my knowledge.

Q. What per cent or proportion of the installations in your territory are G. & B. pumps? A. From ninety-five to ninety-eight per cent, I believe.

Q. And the balance is what pumps that are installed? A. A few Bowsers and a few Rapid Dayton pumps, and a few of the Pennsylvania Specialty pumps, and a few Wayne pumps, a few of all, a very few. 416

Q. If you know, what proportion of the G. & B. installations have been installed under lease and loan contracts? A. According to the information that comes to me—

Q. If I may ask, that is your information that you get as traveling about over your territory? A. From the man that has the pump installed on his curb.

Q. Go ahead. A. I was trying to call to mind an instance where anyone has ever told me they have purchased the pump. I do not recall an instance in my territory where the pump has been purchased by the man who has it installed on the curb in front 417 of his place of business.

Q. Are you speaking with respect to all pumps, or merely the G. & B. pump? A. The G. & B. pump. Over in Cayuga County and a portion of Wayne, in the northeastern end, the Fay C. Adams is operating and has installed the Pennsylvania Specialty Company's pumps, and in some of the towns the Fay C. Adams is represented as strongly as the Standard Oil.

Q. Do you know whether the Adams Company installs their pumps under lease and loan agreements? A. They do.

Q. With respect to the per cent of installations of G. & B. pumps that are under lease contracts and those that are sold outright, you testified that you do not recall anyone having told you that he had purchased a G. & B. pump and had it installed. Do you recall anyone having told you that he had such an equipment installed under a lease and loan agreement? A. I do recall one instance where the man has told me—and a reputable man and I believe it—that he has purchased the outfit. That was just recently, though, not over two weeks ago, in a little town down near—
419 I cannot recall the name of the town, now, but down near Addison, New York, a milling company that had purchased an outfit. It is the only instance in my experience for the entire year that the outfit had been purchased by the man who had it installed on his curb.

Q. Now, with respect to those that have been leased and loaned, what have they said about it? A. I make it a special point—

Q. Just a moment. Let me settle this thing, to make it very clear. I want to know to what extent you are actually acquainted with the terms under which these pumps were put in, and I am distinguishing
420 those that you do not know about at all from those where you, from your experience, have reason to believe that they are put in under lease and loan agreement? A. The only information I have is what they tell me.

Q. That is just what I want to get at. What part of those installations of G. & B. pumps, so far as you know, are put in under loan or lease agreement? A. According to what they tell me, each and every dealer I called on, I do not know of one, but is put up under those conditions, or put on the curb under those conditions. I have not come against but one instance

421

where the man owned his pump, that I can recall at this time.

Q. In your territory what has been your experience; do dealers in gasoline, who sell through curb pumps, have installed on the same premises more than one such equipment? A. In instances there is a pump inside the garage for service to the cars inside, and there is one pump on the curb—in instances.

Q. Would you say in few or many instances there are more than one such equipment? A. A few instances. In a few instances they have two pumps, one on the inside of the garage and one on the outside.

422

Q. If you know, where there is more than one installation, does the retailer deal in more than one company's gasoline at the same time? A. No, not in my territory. I have not an instance that I can call to mind.

CROSS-EXAMINATION by Mr. Speer:

Q. You mentioned a few small companies, as I understand, which you say operate in that territory and sell gasoline. Do they sell to the local dealers in quantity, or do they attempt to market their product direct to the consumer? A. There is one company that is marketing their product both through the curb pump, or through a curb pump in one city, and also have service stations in other cities in which you drive in, in my territory.

423

Q. And that company, that is operating curb pumps, and has service stations of its own is, in that way, reaching the ultimate consumer with its product? A. Yes.

Q. Is it selling it under a trade-mark? A. They have their name on their service station.

Q. What company is that? A. The Warren Oil Company.

424 Q. The other companies just sell to local dealers in quantity, and they distribute? A. They distribute; that is they distribute through their curb pump to the autos.

Q. And of course they can distribute it under any name they please, or without any name? A. Yes.

Q. The Standard Oil Company of New York has adopted the policy of establishing service stations and curb pumps so as to sell its product to the ultimate consumer? A. They have no service stations in my territory.

425 Q. They are using the curb pump system? A. They are using the curb pump system, yes.

Q. And deliver the oil there, and it is sold as theirs, under their trade-mark to the ultimate consumer? A. Yes, sir.

Q. The man who has an automobile and wants a supply drives up and gets it? A. Yes.

Q. The companies that are, like the Warren Company, reaching the ultimate consumer, are doing it through service stations and through curb pumps? A. There is only one instance where it is sold in my territory through a curb pump, and this man buys the oil outright, and the oil company is not interested in the

426 outfit that it is dispensed through. In other words, in no instances has the Warren Oil Company installed any outfit in which they are interested that I have known of, aside from their own stations that they are now opening up, except in an instance where I had worked up a prospect and had enticed him into believing that he should open up service statoins and drive-in stations, we will say, and I had him sold; and he was willing to place the order, in fact was anxious to sign the order but, owing to the fact I felt I might take undue advantage of him, until we had secured the proper locations, I did not take the order. The result is that, in calling upon the Warren Oil Com-

pany, that he was rather suggested to call on in reference to securing the gasoline—in calling on them repeated times at my expense, they finally switched him over and gave him an outfit, so he told me, and furnished him the tanks and furnished him the pumps, and he has the station, now, and I am still waiting for the order.

Q. That long speech was not in answer to my question. The Adams Company, as I understand you to say, is loaning and has loaned some? A. Has loaned some.

Q. Has it a brand under which it sells its gasoline? 428
A. I have purchased it at different places, but I do not know whether he has a name for it. I have not seen any.

Q. These curb filling stations that they have installed, do they use any name on them? A. No; I have not seen any name.

Q. You do not know of any? A. In my evidence I said it was the Corn Planters Refining Company, or Fay C. Adams Oil Company—I am not even familiar with what he calls his gas or whether it has a name.

Q. Is there a Sterling Oil Company operating out in your section? A. Not that I know of.

Q. Does the Pavania Oil Company operate in your 429
territory, the Warren Company? A. The Warren Oil Company is the one I was talking about.

Q. I thought there was a company in Warren operating under the name of the Pavania Oil Company? A. Not in my territory, that I know of.

Q. These companies that are operating now, the Warren Company and the Adams Company are quite active in the territory that they are occupying so far as competition is concerned? A. Well, as I say, there is only one pump in my territory.

Q. I am not talking about pumps. In the sale of gasoline? A. They are not very active.

430 *L. W. Cheney, Direct*

Q. Are they not more active than they were? A. You see, I have only been in the territory a year.

Q. Yes. A. I never hear of them, only when I come in the spot where they are doing business.

Q. Yes? A. The Warren Oil Company is represented only through one pump. Now, they are opening up, in the last two months, their own stations, or two stations in the City of Geneva. Further than that they are not represented.

Q. Instead of loaning the pump to the operator, if the company would make the operator his agent, and
431 instead of loaning the pump would own the pump, and have him operate it as their agent, under commision, that would have the same effect, so far as the sale of pumps is concerned, as if they loaned it, would it not? A. That I do not know.

Q. Well, here is John Jones, to whom a pump has been loaned and who is operating it and selling the gasoline of an oil company. That not being your pump, you did not get the sale of it. Suppose that, instead of loaning it to John Jones they had made John Jones their agent, and put in the same outfit. The effect would be the same, so far as your business is concerned, would it not? A. I presume so.

432

Mr. Speer: That is all.

Witness excused.

L. W. CHENEY was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct-examination by Mr. Burdeau:

Q. State your name and address, please? A. L. W. Cheney, Floral Park, Long Island, New York.

Q. What is your business? A. I am salesman for S. F. Bowser & Company.

Q. What territory do you cover? A. Long Island, New York.

Q. How long have you been salesman for that company? A. Since 1911.

Q. How long have you been working Long Island? A. Since the 1st of February, 1919.

Q. During the time you have worked in that territory have you observed or encountered any instances where prospective customers had been furnished an equipment, oil tank and pump, by an oil company under a lease? A. Yes, sir. It is a daily occurrence. There are innumerable instances. 434

Q. Do you recall any particular instances of that kind? A. Yes, William L. Mantha, of Bayport, Long Island, wrote a letter to our company inquiring about our five-gallon pump. I made a special trip to see him and showed him our equipment and endeavored to persuade him to purchase it, but he said he wanted to investigate a little further. I called on him again in about ten days and he was not through, he said, with his investigating, and I called another week and he said that he had made arrangements with a large oil company to furnish him a five-gallon pump without charge.

Q. You say an oil company had? A. Yes. 435

Q. Did he specify the oil company? A. Yes, the Standard Oil Company furnished him a Gilbert & Barker five-gallon pump.

Q. You also called on the firm of Forman & Hutcheson, Hempstead, New York? A. Yes, in fact, I worked with them for about three weeks, or close on to a month, giving practically all my time and attention to them, in the endeavor to persuade them to purchase our equipment, which would have run around $1,000. They said they liked our equipment and would give me the order for it unless they were furnished full equipment by an oil company. During

436 *L. W. Cheney, Direct*

this time I practically did not make any other sales, and I had no income from my efforts, as they finally informed me that they were being furnished full equipment, a thousand-gallon tank and a five-gallon pump, with other equipment, from the Standard Oil Company of New York, the equipment being Gilbert & Barker.

Q. During the time that you have worked in that territory about how many cases of that kind would you say have come under your observation? A. I would say that all the public garage owners have
437 the equipment that is loaned and leased to them.

Q. I would like to get some approximate idea of the number. Would that mean a dozen or 50 or a hundred? Could you approximate the number of those cases that you know of yourself? A. Off-hand I would say approximately 100; I could not name them or give every name here from memory.

Q. That is not necessary. A. I would say approximately 100 outfits.

Q. One hundred cases in which the equipment has been installed by an oil company under a lease and loan agreement? A. Yes, sir.

Q. You also have competition from other pump
438 manufacturing companies, have you not? A. Yes, sir.

Q. But do they ever give away or lend pumps for a nominal consideration, do you know? A. I do not know how to answer that question.

Q. I will withdraw it. You have described certain cases in which equipment has been leased or loaned by oil companies. Now, do any of your competitors, pump manufacturing companies, do the same thing?

Mr. Speer: I object to that. I think it is irrelevant and immaterial. There is no charge against any pump companies.

439

Examiner McCorkle: I note the objection. Proceed to answer.

A. I would say it is a little difficult to answer that question.

By Mr. Burdeau:

Q. Who are your competitors in the territory that you sell? A. The Wayne Pump & Tank Company and the Gilbert & Barker Pump Company, to the extent that they do not solicit business directly to sell equipment.

440

Q. You have answered my question. You have named your two competitors. Does the Wayne Company ever give away or lease for a nominal consideration any pumps manufactured by them?

Mr. Hayes: It seems to me that ought to be, if he knows.

Mr. Burdeau: Of course I am only asking what he knows.

A. Not to my knowledge.

By Mr. Burdeau:

Q. Do you know the method of distribution adopted by the Gilbert & Barker Company? A. Yes.

441

Q. Will you give that? A. It is through the Standard Oil Company of New York.

Mr. Speer: I object to the question for the reason that the Gilbert & Barker Company is not a party to the action. What they are doing has no bearing on the issues.

Examiner McCorkle: The objection is noted. Proceed with the answer.

By Mr. Burdeau:

Q. Do you know? A. The Gilbert & Barker Pump & Tank Company, to the best of my knowledge,

do not sell their equipment in my territory, but it is placed in my territory through the Standard Oil Company of New York, leasing and loaning them to the operators.

Q. Have you ever heard of a salesman from the Gilbert & Barker Company soliciting any of the garage owners or other pump users in your territory? A. No, sir; not as a salesman to sell the goods direct.

Q. If you know, will you please state what make of pump is usually installed by the Standard Oil Com-
443 pany under these leasing and loaning agreements? A. The Gilbert & Barker pump exclusively.

Q. Do you believe that the practice that has been mentioned here, namely of leasing and loaning pumps has any effect on your business and the business of the Bowser Company? A. Absolutely. It has annulled or killed our entire public garage business so far as the gasoline equipment is concerned. It has affected the Bowser Company's business because the company which has furnished the garage owners' equipment has used another pump and tank company's equipment and it has been very discouraging to me, as a salesman and must be to all other Bowser sales-
444 men, because of the business lost; and this is demoralizing to the sales force, inasmuch as the salesman's income is curtailed, and the salesman consequently does not call on the public garage owner and give him the attention and secure other possible business which he would secure if it was possible for him to secure the business. Therefore, I think it is detrimental to the salesmen and to the Bowser Company that these equipments are leased and loaned to the public garage owners.

CROSS-EXAMINATION by Mr. Speer:

Q. What other companies besides the Standard Oil Company of New York lease and loan pumps and

equipment in your territory? A. The Tidewater Oil Company, the Gulf Refining Company, The Texas Oil Company, the Ohio Cities Gas Company.

Q. The Pure Oil Company? A. That is a division of the Ohio Cities Gas Company.

Q. Are they active in installing pumps at the present time? A. I imagine they are, as much as they possibly can be, but they certainly do not succeed very well because of the great number of the Standard Oil Company's equipments which are already in.

Q. But they are quite active now in competition, endeavoring to install their pumps where they can? 446
A. Yes, sir.

Q. And the competition in your territory now is quite keen, is it not, between these companies, each one trying to get the business? A. I cannot answer that question.

Q. What pump does the Tidewater Company usually install? A. I am not sure which one it is.

Q. Do they install any of yours? A. No, sir; that is, not to my knowledge, at the present time.

Q. What pump does the Gulf Company usually install? A. The Rapid Dayton.

Q. Where is it made? A. At Dayton, Ohio.

Q. What pump does The Texas Company usually 447
install in your territory? A. They have installed the S. F. Bowser Company's and also the Wayne Oil Tank & Pump Company's pumps.

Q. The Bowser Company is your company? A. Yes.

Q. What pump does the Ohio Cities usually install? A. The Wayne and the Bowser. There may be possibly some others installed, but I do not recall their names now.

Q. These Bowser pumps that are installed by The Texas and the Ohio Cities Company are bought by them direct from your manufactory, are they not? A. Yes.

448 *L. W. Cheney, Cross*

Q. And they are leased and loaned to the operators in the same way that the Standard Oil Company of New York is leasing and loaning the pumps which it installs? A. So far as I know. I do not know the details.

Q. Well, your opinion is that they are operating in the same way? A. In the same line; yes, sir.

Q. So that your Bowser pumps, in so far as they are being installed by The Texas Company and the Ohio Cities Company, are being leased and loaned in your territory the same as the Gilbert & Barker
449 pumps? A. Yes, sir.

Q. Do you get any commission on those pumps which are bought from your company by The Texas Company and the Ohio Cities Company? A. A small commission.

Q. Not enough to be of much value? A. It would be much more to my interest if the outfit were sold direct instead of through the company.

Q. In so far as those pumps are sold directly by the company and installed, they positively take away from you, in so far as the Bowser Company's pumps are sold in that way to the companies and installed, they take away from you directly that amount of
450 business, do they not? A. Yes, sir.

Q. And that is being done by your own company? A. Yes, sir; because they are forced to, to meet the competition. It is not because they are glad to do it, or want to do it.

Q. They are in the business of manufacturing and selling pumps, are they not? A. Yes.

Q. And they get the same price for them whether they sell them to an oil company or— A. No, I don't think so. I imagine they do not. They must prefer to sell them the way they have sold them until they began this lease and loan proposition, which forced them to furnish pumps where they could to oil companies that do put them in in that way.

Q. They have naturally followed the new trend in business development and are selling their pumps to the people who want to buy them? A. The people who are forced to buy them.

Q. Do you say The Texas Company are forced to buy them? A. They are forced to buy some pump and we have the good fortune, as long as they are forced to lease and loan pumps, to furnish some of our pumps.

Q. Do you understand The Texas Company is claiming that it is forced to do this? A. No, sir.

Q. Now, if these companies who are leasing and 452
loaning pumps in this way—if, instead of adopting that method of doing business, they made these operators their agents, and allowed them a commission and installed the pumps where they now are, that would not make any difference so far as your business is concerned, would it? A. Do you mean that the people would buy the pumps direct, then?

Q. Yes; the company, instead of leasing a pump to a man, would go and make an arrangement with that operator to be their agent and to handle their oil and take care of their pump, and pay him a salary or a commission and put in the pump? A. Who would own the pump? 453

Q. The company. A. The oil company?

Q. The oil company. That would not help you at all, would it? What do you say? A. Let me think a moment.

Q. You would not get the sale if they adopted that method, would you, any more than you do now? A. No; it would not be as good for me.

Q. It would not be as good? A. No.

Q. Because then you would have no hope whatever that the pump would be taken out and you might get a chance to put one of yours in? A. Yes, sir.

(Witness excused.)

454 *H. W. Brown, Direct*

H. W. BROWN was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Burdeau:

Q. State your name and address, please. A. H. W. Brown, 452 Broadway, Albany, N. Y.

Q. What is your business? A. I am district sales manager for S. F. Bowser & Company.

Q. Your district embraces what territory? A. My district embraces all of the New England States except Boston, and the four eastern counties of Massa-
455 chusetts, and the State of Rhode Island, and the State of New York, except the three point counties surrounding New York City, and the central part of Pennsylvania.

Q. How many salesmen work under your supervision? A. At the present time about 29.

Q. You are the head of the selling organization of the Bowser Company in the territory you have just mentioned? A. I am.

Q. You receive reports from your salesmen from time to time? A. I do.

Q. Have you had brought to your attention the practice of oil companies leasing and loaning for a
456 nominal consideration, pump and oil tank equipment? A. I have.

Q. Do you believe that has any effect on the business of the Bowser Company? A. I do.

Q. What effect do you think it has?

Mr. Speer: I object to asking the witness as to his belief.

Mr. Burdeau: I withdraw the question.

By Mr. Burdeau:

Q. Can you state whether or not that has had an effect on the business of the Bowser Company? A. I can.

Q. Will you please state what effect that practice has had on your business? And by "your business," I mean the business of the Bowser Company. A. It has had a demoralizing effect, first, upon the sales organization, and it has had a demoralizing effect upon the business in general, because of the reduced production in the particular line of equipment, namely, the gasoline tanks and pumps, which we have built a factory and organized a production department to produce.

Q. Your plan of distribution of your product is what? A. Our plan of distribution is by sales direct 458
from the company through salesmen to the consumer, to the user.

Q. The individual consumer? A. Yes, sir.

Q. What competitors have you in the territory that you have mentioned? A. Well, we have various tank and pump manufacturers as competitors. Do you wish me to name them?

Q. You might name a few. A. We have the Wayne Oil & Tank & Pump Company; we have the Milwaukee Tank & Pump Company; the Tokheim Tank & Pump Company.

Q. Do you know what their method of distribution is? A. Their method of distribution, to the best 459
of my knowledge, is very similar to ours—direct from the manufacturer to the consumer, or the user.

Q. Does each of those companies maintain a force of sales agents and salesmen? A. They do.

Q. In your territory? A. Yes.

Q. Can you state whether the Gilbert & Barker Company competes with the Bowser Company in the territory that you have mentioned? A. The Gilbert & Barker Company do not.

Q. Are any of the pumps made by the Gilbert & Barker Company distributed in the territory you have mentioned? A. They are.

460 *H. W. Brown, Direct*

Q. Do you know how they are distributed? A. Through the Standard Oil Company.

Q. Under the lease and loan agreements that have been mentioned here? A. Yes, sir.

Q. Have you any record of the number of cases? A. Not at hand.

Q. When you said, a moment ago, that this practice had a demoralizing effect on your salesmen, could you be more specific in stating what you meant by "demoralizing effect"? A. Yes.

Q. Please do so. A. Our sales policy has been,
461 as I stated, to sell directly through the salesmen to the user. Our salesmen work on a commission basis. They finance themselves. They are given a territory in which they are protected under contract. They have been so discouraged by so many tanks and pumps having been leased or given away, after they have, through their own soliciting efforts, created a demand for establishing the handling of gasoline in connection with the business, garage or otherwise, as the case may be; after they have established that demand or created a desire to do that thing, the Standard Oil Company have interceded and given them, or leased them, an equipment to do the same
462 thing with, naturally defeating the sale that the salesman had worked up, to such an extent that many of my territories have been abandoned. I have been unable to keep men in the territory. I have territories that man after man has left because he could not sustain himself and his family under these conditions.

Q. From the standpoint of the company itself, what do you mean by demoralizing effects? A. From the standpoint of S. F. Bowser & Company?

Q. Yes. A. The demoralizing effect I mean there is that for the last 35 years Bowser & Company have been developing and building up this business on the

basis that I have outlined. In the process of this development we have built and equipped a large factory, have had special machinery made to make these equipments. We maintain an organized force of skilled workmen to operate these machines and to assemble and make the pumps, so that with this interference, if I may use the word, our sales of this particular line of equipment have diminished to the extent that our factory has deteriorated, you might say, or reduced its efficiency because of the slackened production.

Mr. Burdeau: That is all. 464

CROSS-EXAMINATION by Mr. Speer:

Q. Have you anything to do with the management of the Bowser Company generally? A. Well, if you will just define "generally," a little bit more?

Q. I mean outside of the sales territory which you cover? A. Yes.

Q. In what way? A. To the extent that we have managers' meetings at our home office at which time policies are discussed that not only pertain to sales but pertain to the production end and other work in general. 465

Q. But you have nothing to do with the management of the home company or anything to do with the details of the manufacture or the keeping of its accounts? A. No.

Q. And you don't know anything about the number of pumps that it is making and selling generally all over the country? A. Why don't I?

Q. How do you know it? A. By statistics that we have right before us to examine, at each managers' meeting.

Q. Have you any of those statistics before you? A. I have not.

466 *H. W. Brown, Cross*

Q. That would show, better than your testimony, as to the actual effect upon the business of the company? A. That is quite true.

Q. Don't you know that the business of the Bowser Company has increased largely in the last years? A. No, sir.

Q. It has been falling off, has it? A. I think, on a shaking down basis, it has not more than held its own.

Q. The officials of the company who really know about the management of the company and have
467 charge of it, would be in a much better position to tell about those matters than you, would they not? A. They probably would.

Q. All you know is what you may have learned in that general way from somebody else? A. No; you are wrong.

Q. Have you ever examined the books? A. I have, and keep records of my own territory, my own district.

Q. Oh, yes, in your own territory. A. I have the records of the entire sales organization in our general work, submitted to us, currently.

Q. Is it not a fact that the demand for pumps
468 of this kind and equipment of this kind has increased largely in the last few years? A. The demand has undoubtedly increased.

Q. And is it not a fact that this method of loaning and leasing such equipment has caused a great many more of them to be installed than otherwise would have been installed? A. That is a matter of opinion only. There is no way to determine that. There is no way of proving that. You are only asking for my opinion; is that it?

Q. Is not that what practically every witness has said here—that it has caused a great many to be in-

stalled and in some cases they were of the opinion that they were unprofitable and would not have been installed otherwise?

Mr. Burdeau: I object to that. The record shows.

Mr. Speer: I will strike that out. I withdraw that. The record shows what other witnesses have stated.

Examiner McCorkle: The objection is sustained.

By Mr. Speer: 470

Q. Is it not your best judgment, Mr. Brown, that as a result of this keen competition in the sale of gasoline and in order to make sales, the loaning and leasing of pumps to the operators has caused the installation of a great many more of these little curb filling stations than otherwise would have been installed? A. I do not think so.

Q. You do not think it has increased it any, then? A. I do not.

Q. At any rate, for some reason, the demand for pumps has been largely increased in the last few years? A. Yes. The demand for pumps has been.

Q. A great many of these pumps have been placed 471 in, in different places, have they not? A. Yes.

Q. And that is true not only in your territory, but is it not true all over the country? A. I could not testify to all over the country.

Q. And that all these pump manufacturers have had an increase, in recent years, in the volume of their business, the number of pumps which they manufacture and sell? A. Now you are asking me something that I do not know anything about. I have no records of the other pump makers, so I do not know.

Q. Is it not only within a very few years that

this system of selling gasoline through these little filling stations has been developed? A. Probably the last 10 years.

Q. Has it not been developing much larger the last two or three years? A. Constantly.

Q. And that has created a demand for more pumps, has it not? A. We will presume that it has.

Q. All right. Somebody has manufactured those pumps? Some manufacturer has made them? A. Yes, certainly.

Q. And all these pumps which the companies in-
473 stall in this way are all bought from some manufacturer, are they not? A. I presume they are. I don't know.

Q. The Gilbert & Barker Company, as I understand, does not use local sales agents at all; they sell direct to large users of pumps? A. They do.

Q. I understood you to say so. Is that a fact? They have no local sales agents in your district? A. No, they have not.

Q. They sell to the oil companies? A. I do not know as to that. I do not know what their policy is. I do not know what they do. The oil company could testify to that better than I could.

474 Q. What other companies compete with the Standard Oil in your district? A. In my district we have the following oil companies operating: The Texas, the Gulf, the Sinclair, the Ohio Cities Gas, the Warren Oil Company, the Kendall Refining Company, the Atlantic Refining Company, and probably some other smaller companies that I do not recall just at the moment.

Q. Do any of these companies install the Bowser pump, aside from the Standard Oil Company of New York, which you say installs the Gilbert & Barker? A. Some of these companies use Bowser equipments, yes.

475

Q. Which companies use Bowser equipment? A. The Texas uses some Bowser equipments; the Gulf Refining Company uses some Bowser equipments; the Sinclair Oil Company have used some Bowser equipments.

Q. And are still using them to a certain extent? A. Yes, in a measure.

Q. And wherever The Texas Company are doing a large business and installing a large number of pumps, it is your company's pumps that they install, as a rule? A. I do not know as to that. They use some of our pumps, but whether it is as a rule or not, 476
that they are using the majority, or exclusively, I cannot say.

Q. Those pumps they buy direct from the company and not through your sales agency? A. That is correct.

Q. It would not help you in your selling of pumps, would it, if the company, instead of leasing or loaning the pump to the operator, would make him their agent and either pay him a salary or allow him a commission, and install the pump on his premises, the same as they do now? A. What do you mean by "the company"?

Q. The company that leases the pump—the oil com- 477
pany. A. Any oil company?

Q. Yes. A. You say it would not help our sales organization?

Q. Yes. A. I cannot see as that would be any deviation from the present policy of the oil companies.

Q. So far as it would affect your business, it would not be? A. I cannot see that it would be.

Q. As a matter of fact, would not that be worse for you, because if they created an agency there, and owned the station, and were employing the operator on salary or commission, there would then be less hope that the pump would be removed than under the present system? A. That is a theory, purely.

Q. Don't you think that would be the result? A. I would want more time than what you have given me to analyze that before answering definitely.

Q. At any rate, that method of doing business would not give you any better opportunity? A. It would not be satisfactory to us, no.

Q. It would not give you any better opportunity to sell pumps than under the present loaning system, would it? A. I don't know. I say I would not answer that question directly without more time to analyze it.

479 Q. Unless the company bought your pump, it certainly would not enable you to make any more sales, would it? Take an illustration that I used before: Here is John Jones, who is talking about having a filling station, or is being talked into it, and the company, we will say the Gulf Company, go to him and loan him a pump, and he operates it and sells their gasoline under their trade brand, without having to pay any rental for the pump. Now, if that is not your pump, you do not get the sale of it, do you? A. No.

Q. That is what you object to—that the pump company has sold that direct to the oil company and the
480 oil company puts it in there and, consequently, you do not get the sale of it; that is what you object to? A. Yes.

Q. If, instead of loaning that to John Jones the company went to John Jones and said: "We want to put in a filling station here, and we want to make you an agent, and have you operate it for us," and that arrangement was made and the company put in this pump, and he operated it for the company, for the oil company, under a salary or under a commission, still they would put in the same pump as they leased him, and it would not help you any to get sales, would it? A. The human equation enters into it so deeply—

I have seen so many filling station propositions of that kind where John Jones would come to the Bowser Company in about two or three months, and put up his own pump.

Q. Isn't he liable to do that when it is loaned to him? If he becomes dissatisfied, he can take it out, can he not? A. It does not belong to him.

Q. He can throw it out, can he not? A. I don't know whether he can. The Standard Oil Company can tell you that.

Q. For all you know he can? A. For all I know, yes.

482

Q. That is all. A. Mr. Speer, I would like to clear up one little point.

Q. Certainly. A. If you will permit it?

Q. Certainly. A. That is, has our business increased?

Q. I don't know. A. I say, I would like to clear that up.

Mr. Burdeau: In reference to that question, he means. He says he wants to clear it up.

The Witness: Do you consent?

Mr. Speer: Certainly.

The Witness: The records of our business will 483
probably show for the last two or three years an increased volume of business, but the increased production of units will not show an increase. The reason is that our prices, like the prices of everything else, have been advanced to meet the increased cost of labor and material and production. So that our prices today are from twenty-five to forty per cent higher, dependent upon the different units, than they were two or three years ago. So that our volume has increased, while our production in units has not. Salesmen sometimes think their business has increased in dollars and cents but in sales it has not. That is one point I wanted to give you in connection with the point you asked me about a while ago.

484 *H. W. Brown, Cross*

By Mr. Nesbitt:

Q. Has not the Bowser Company, during this past year, received orders for all the pumps that it could supply? A. I don't think it has.

Q. Have any of the companies that you have just referred to placed orders with your company during the past year that have not been filled? A. Any of the oil companies?

Q. Yes. A. I don't think so.

Q. Are you positive about that?

485 Mr. Zechiel: As a matter of fact, the Bowser Company had a strike. The question is wholly irrelevant.

Mr. Nesbitt: Well, I don't know. It is a question of production.

Examiner McCorkle: I will rule out anything about strikes.

Mr. Nesbitt: I think he has got a right to develop that.

Examiner McCorkle: You may note your objection. I will rule it out.

Mr. Nesbitt: Do I understand that we cannot develop whether the business of the
486 Bowser Company this year is greater than it was last year, and whether the Bowser Company have not received orders which they cannot fill?

Examiner McCorkle: No, that is not my ruling. My ruling is that you cannot go into the question of strikes as affecting their production.

Mr. Nesbitt: I am not intending to. I am going into their business, as to whether their business has suffered.

Examiner McCorkle: Another thing: I think your associate attorney went into that

business a while ago, very fully, as to whether that company had increased its business or not.

Mr. Nesbitt: I am not clear yet as to whether there has been an increase in the Bowser business during the last few years. That is what I am trying to find out.

Examiner McCorkle: All right. Go ahead and ask your question.

By Mr. Nesbitt:

Q. Do I understand that there has been a greater 488
turn-over in the business of the Bowser Company during the last year than there was in the previous year? A. No, sir.

Q. Then what am I to understand you mean when you said that their books would show an increase in the volume of business?

Mr. Zechiel: I think he explained that fully.

The Witness: I am sorry you did not get that point. I will give it to you again.

Examiner McCorkle: I think that has been all gone over.

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The Witness: The price of the equipment two years ago was one dollar, for illustration. The price of it today is $1.40. That would show two-fifths increase in volume, with no additional increase in output. The volume increase is mythical to that extent, and misleading.

By Mr. Nesbitt:

Q. And you are not marketing as many units now as you were, say, three years ago? A. As I explained to your associate attorney, I have no figures before me, but my judgment is that we are not.

Q. I would like to know if there have not been

orders placed with your company this year which have not been filled? A. I will refer you to your associate on that. He says the home office is the place to get that information. As far as my territory is concerned, there have not been any placed that were not filled. We have had stock constantly.

Q. You do not know whether any orders have been placed with your company that have not been filled during the last year? A. I would not make affidavit to that, no. As I said before, the record at the home office would have to show that point. I will say this:
491 There have been no orders placed by any individual user with our company that have not been filled. If there are any orders that have not been filled, they were placed either by the Texas Company or the Gulf Company.

By Mr. Schekter:

Q. Does the territory in which you have general sales supervision include any territory which the Atlantic Refining Company is operating? A. Yes.

Q. What territory is that? A. That is eastern Pennsylvania.

Q. Do you know, of your own knowledge, the terms
492 of the agreements of lease and loan under which the Atlantic Refining Company is placing the pumps with the several dealers? A. No, of my own knowledge I do not.

Mr. Schekter: Mr. Examiner, at this point, it being the first point in the proceedings at which the Atlantic Refining Company has been directly complained of, I move that all the testimony of the witness, all of the testimony not of his own knowledge, be stricken from the record.

Mr. Burdeau: I do not think there has been any attempt to characterize any of this testimony as hearsay.

493

Mr. Zechiel: There has been nothing pointed out as to what that evidence is.

Examiner McCorkle: The motion is overruled, as too general and not in apt time.

By Mr. Schekter:

Q. Do you know whether the Bowser Company sells any of its apparatus or equipment to the Atlantic Refining Company? A. Yes.

Q. You say that it does? A. No; I say I know.

Q. Does it? A. No.

494

Q. Would you be surprised if I told you that the Bowser Company has, in fact, been supplying to the Atlantic Refining Company pumps and general equipment such as is being installed? A. When?

Q. Are you so positive now that you have the entire information on the subject that you are willing to go on record here as testifying that, in fact, no such sales have been made by Bowser to the Atlantic Refining Company? A. Your last question was what?

(The reporter repeated the question as above recorded.)

The Witness: I would be surprised, yes. Now, tell me, do you mean now or in the past?

495

By Mr. Schekter:

Q. Just assume that I mean at any time. A. Oh, in years gone by I would not be surprised, no.

Q. Do you know, of your own knowledge, as to whether, in years gone by, they have supplied equipment to the Atlantic Refining Company? A. Yes, in years gone by.

Q. How recently has that been? A. To my knowledge it has not been in the last three or four years.

Q. Do you know, further, that the Bowser Company has refused to sell to the Atlantic Refining Com-

pany equipment for installation under lease and loan agreements, but that they have sold the Atlantic Refining Company for resale? A. You say do I know?

Q. Do you know that? A. I do not.

Q. But you do not know that that is not so? So far as you know, that may be true? A. Yes.

Mr. Schekter: That is all.

RE-DIRECT EXAMINATION by Mr. Zechiel:

497 Q. When you testified in respect to the equipment, pump and tank equipment sold to the Atlantic Refining Company, you are testifying with respect to your territory? A. Yes; I am testifying with respect to my territory, and with respect to my own knowledge on the subject.

Q. Is it not a fact that in the last year the Bowser Company has had a strike in their factory? A. Yes.

Q. How long has that been? A. How long since the strike?

Q. No. During what period of time was the strike on in your factory?

498 Mr. Schekter: Is this the testimony that the Examiner ruled out?

By Mr. Zechiel:

Q. Answer the question, unless the Examiner rules it out. A. The strike was on for about ten weeks. I would like to explain that more definitely, since the case is opened up. This strike began, we will say, about the first of July, as I recall it, or the first of June, and for a time, about ten days, or such a matter, the plant was entirely closed down by Mr. Bowser himself. Then he opened up, and we have been building up ever since.

Q. So that there was a time when there was very much underproduction by your company during this year? A. There was.

By Mr. Nesbitt:

Q. Did you lose any customers as a result of that —regular customers? A. I presume by that you mean did we have any cancellations?

Q. Any large cancellations? Well, never mind, we can develop that otherwise. A. I do not know that I can answer that anyway.

Examiner McCorkle: Is the question withdrawn? 500

Mr. Nesbitt: Yes.

(Witness excused.)

Whereupon, at 12:30 o'clock P. M., a recess was taken until 2 o'clock P. M.

After recess.

CLAUDE P. HEARN was thereupon called as a witness and, having been duly sworn, testified as follows: 501

Direct-examination by Mr. Zechiel:

Q. State your name and address. A. Claude P. Hearn, Wilmington, Delaware.

Q. With whom are you employed? A. I am in business for myself, the Hearn Oil Company.

Q. What is your relation to that company, officially? A. I am manager, and practically it.

Q. And owner of the company? A. Half owner, and practically it.

Q. Is it a corporation? A. A co-partnership.

Q. How long has your concern been in business? A. May 20, 1912.

Q. Did you have any experience in the oil business prior to that time? A. Nine years.

Q. With what concern? A. Previous to that I was with the Indian, and previous to that the Standard Oil Company of Baltimore, which is the Standard Oil Company of New Jersey now, I understand.

Q. What is the territorial extent over which your company does business? A. We have a plant at Wil-
503 mington that operates in Wilmington, and we serve about one-third of the state from there We have a place at Middletown that—

Q. What state is that in? A. That is in Delaware. That takes on another part of the state down through part of Kent, all of Newcastle, and part of Kent. Then we have another branch at Chestertown, Maryland, which operates in Maryland exclusively, which takes in about four counties, and comes up as far as Cecilton and down six miles below Centerville, Queen Anne County.

Q. In about what part of Delaware do you sell your product? A. In about one-half.

504 Q. And of Maryland? A. It is hard to say. We only take about four counties, and I think there are twenty-six in Maryland.

Q. Do you sell your product in any other states than Maryland and Delaware? A. Other than we have two or three points that we make right on the edge of Pennsylvania. There are only about two towns over there. Wilmington is only nine miles from the line.

Q. In connection with your business, have you had occasion to travel over the entire area? A. Yes, sir.

Q. Are you acquainted in a general way with the

505

distribution of your product through the retailers? A. Yes, sir.

Q. In that connection have you come more or less intimately into personal touch with the retailers of your product? A. Practically every big customer that we have I know.

Q. Your general business is the retail of gasoline products and refined oil? A. No; we are classed as jobbers. We sell to the garages. I consider retail as the man who is selling it to the automobiles. We do not sell that way.

Q. But the produc. you sell? A. Is to the stores 506
and automobiles.

Q. What is the product? A. Kerosene, lubricating oils, gasoline, greases and fuel oil.

Q. In connection with your business, do you also handle oil tanks and pumps? A. Yes, sir.

Q. Do you sell such equipments to your customers? A. We did. Not now.

Q. Do you lease and loan such equipment? A. We do.

Q. For how long have you been leasing and loaning such equipment? A. About eighteen months.

Q. Prior to that time were you handling the equip-
ment then? A. Yes, sir. 507

Q. Prior to that time eighteen months? A. Yes, sir.

Q. How did you dispose of your oil tanks and pumps? A. We sold them to the customers.

Q. For how long had you been doing that? A. Ever since we had been in business.

Q. In a general way, about how many oil tanks and pumps have you people sold to your customers? I am talking about the sales, now. A. Not very many, as a matter of fact, previous to this loaning of oil tanks and pumps we tried to dodge it. I mean if we could get a man to buy direct from Bowser or Wayne, or

any of the others, the oil pump and tank, we were tickled to death not to handle it; we didn't want it; we only handled it in cases where the customer was going to buy through an oil company, and then we made an effort to sell him; but if we could get his gasoline business without doing it, we were tickled to do it.

Q. So that you sold comparatively few equipments? A. Very few.

Q. After you began leasing and loaning, did you sell any equipments? A. Yes, sir; we sold, I think,
509 one, day before yesterday.

Q. You are now selling such equipments, and have continued to do so? A. Yes, sir.

Q. About what part of your distribution of oil tanks and pumps is sales and what part lease and loan? A. About nine parts leased and one part sold.

Q. About how many lease and loan equipments have you put out with your customers? A. About thirty or forty.

Q. That is the total number? A. I have not the figures, but I should say that is about it—thirty or forty.

Q. You say, prior to about eighteen months ago,
510 you did not engage in leasing and loaning at all? A. Not at all.

Q. What was the occasion of your beginning to lease and loan oil tanks and pumps? A. The Atlantic Refining Company, of Philadelphia, offering our customers—or offering our prospects, I would say, pumps and tanks on a lease. We did not have any chance of selling them.

Q. Do I understand you to testify that you did it to meet competition? A. To meet competition.

Q. Did any other oil company besides the Atlantic Refining Company engage in that practice prior to the time when you began it? A. The Standard Oil Company of New Jersey.

Q. Any other? A. Not prior to that. They are now.

Q. I am talking about prior to that. A. No, sir.

Q. At the present time, who are they? A. Crew-Levick and the Pure Oil Division of the Ohio Cities gas.

Q. Does the Texas Company sell in your territory? A. No.

Q. The Gulf Refining Company? A. Not in our territory, no.

Q. Prior to the time that you began leasing and loaning these equipments, or since that time, have you 512
lost business because a competing oil company did lease or loan such equipments? A. Yes, sir.

Q. Please state that more in detail? A. How do you mean more in detail.

Q. Describe the practice. A. For instance, I do not loan promiscuously. I mean, in other words, I have got to see the gallonage to justify it. There are quite a few that I will probably think of later in my testimony, if you want the names, where they probably thought it would justify it and I did not. I can name one that happened this week: F. B. Norman, of Wilmington, was loaned a pump and tank, five-gallon throw, by the Atlantic Refining Company. The gal- 513
lonage from his location does not justify it.

Q. In your opinion? A. In my opinion, I am speaking of, yes; and they have got the business.

Q. Prior to that time was he a regular customer of yours? A. A regular customer, yes.

Q. He had had installed an oil tank and pump, I take it, before this? A. I had sold it to him.

Q. And has that been a frequent occurrence in your experience? A. Very frequent—which do you mean? I am dealing with the Standard Oil Company of New Jersey and the Atlantic Refining Company, too. Do you mean to ask about the Standard Oil Company or the Atlantic Refining Company, or either?

514 *Claude P. Hearn, Direct*

Q. I am asking with respect to both, but I think you had better separate your answer, speaking with respect to the Atlantic Refining Company. A. I cannot say that I have lost frequently, because I will put it in where the gallonage justifies it. I have not lost any business on that.

Q. Prior to the time that you began installing on the lease proposition, had you lost business because you refused to install? A. I only lost them once or twice before I met it.

Q. Now, with respect to the New Jersey Company?
515 A. Have I lost any business?

Q. Yes. A. I have lost customers, but I have not lost gallonage. In fact, I have gained gallonage.

Q. But you did lose individual customers? A. Yes.

Q. Was that a frequent occurrence or not? A. I should say it was very frequent.

Q. That is down in Maryland, I assume? A. Yes; they operate in Maryland.

Q. In the conduct of your business, you buy your gasoline and other products? A. Yes; we have our storage tanks there and ship it down in boats and tank cars.

Q. When you speak of a loss of business because of
516 this practice, I direct your attention to your business with respect to lubricants, rather than gasoline, now; have you lost lubricant business of your customers because of the lease and loan agreements that other companies have entered into? A. I have, but as I say, the same thing applies to gasoline. I would not allow any competitor to beat me on a price. I would sooner go out of business. So I have met them.

Q. You are speaking of the price, or speaking as to a lease and loan proposition? A. I am speaking as to a lease and loan of equipment. I have lease and loan of lubricating equipment, too.

Q. And that was for the same reason to which you

have testified with respect to the other equipments? A. That is for the same reason, yes.

Q. From your experience in the sale and distribution of gasoline and lubricants, as you have testified, do you think that this practice of leasing and loaning oil tanks and pumps for a nominal consideration, under agreements or understandings that the lessee thereof shall not use in connection with such equipments the gasoline products of any other company than the party who is the lessor is a good practice?

Mr. Speer: We object to that as incompetent, irrelevant and immaterial. 518

Mr. Schekter: I object on the further ground that, as to the Atlantic Refining Company, it has not shown that leases are made for a nominal consideration.

Examiner McCorkle: The objection will be noted. Proceed.

The Witness: You are asking for my personal opinion, is that it?

By Mr. Zechiel:

Q. Yes. A. Do I think it is a good practice?

Q. Yes. A. I think it is an unfair practice. 519

Q. What is your reason for that conclusion, or what are your reasons? A. In the first place, it is in restraint of trade in my estimation.

Q. Speaking more particularly to the economic situation, as a business practice, rather than as a violation of any law or anything of that sort, speaking as a business man? A. I do not know just how to express myself. It curtails competition. There is no competition to it. If I have got a customer and he has got my pump and tank, there is no chance for the other fellow to put it in until my pump and tank comes out. I have no competition. The other fellow

has no competition when he has his pump and tank. If he is any kind of a decent man, he is not going to put my stuff in the other fellow's tank, and if he is not, he is not worth selling, especially on credit.

CROSS-EXAMINATION by Mr. Hayes:

Q. Mr. Hearn, do you deal in pumps—curb outfits? A. Do I buy them?

Q. Are you a dealer in pumps? A. I don't know how you would classify me. I am a jobber. I get
521 the jobber's price on pumps and tanks. I buy them and will sell them.

Q. Do you do an oil business as well as a pump business? A. Yes; I handle pumps and tanks.

Mr. Hayes: That is all.

By Mr. Speer:

Q. Do you sell gasoline under a particular brand of your own? A. No.

Q. You do not use any brand? A. No.

Q. A great many of the dealers do have a brand, and they seek to advertise it as theirs and try to create a demand for their product, do they not? A.
522 Yes; I notice their signs up.

Q. And if they keep it uniform, and of a good quality, that will give them a reputation for handling a good grade of gasoline? A. You did not put that in the form of a question, did you?

Q. Yes. A. I should say yes.

Q. Is it not the purpose of a marketer of gasoline to go into a territory and develop it and try to create a demand for his products, and to establish there a permanent list of customers? A. We all want customers, naturally. We want a market for our stuff.

Q. And you want, if possible, to get customers that will stay with you, and in order to get them to stay

with you, you try to give them a good grade of goods? A. We do.

Q. The purpose of a company that is in business permanently is to try to get a permanent trade, so that it does not have to jump from one customer to another, but to get a customer who will need gasoline and keep supplying him with a good grade, and try to hold him? That is the business practice, is it not? A. Well, we do not advertise it under one brand, and our gallonage has increased from year to year and from month to month.

Q. And you have not suffered any loss? A. No; I 524
have not suffered any loss.

Q. And, as a matter of fact, there is more competition in your territory than there was? A. No.

Q. Are there not more companies operating them than there used to be? A. The only one that has been in addition in seven years is Crew-Levick.

Q. And that one has come in? A. That one has come in.

Q. And the others have been there all the time? A. The others have been there all the time, yes.

Q. You say the objection to this leasing of the pump and tank is that it ties a man up to take that particular gasoline, so that you can get that customer 525
away from the person who is furnishing gasoline? A. That is true.

Q. How do you deliver your gasoline? A. By wagons and trucks.

Q. Do you own those wagons? A. I do.

Q. And the drivers are in your employ? A. Yes; they are.

Q. And those trucks, naturally being yours, do not deliver any other gasoline but yours, do they? A. They do not.

Q. Would it not be possible for a man who wanted to go into the retail business and establish a route, as

we used to have milk routes in the little cities—would it not be possible for him to buy one of those tank wagons and work up a route of his own to which he would supply gasoline? A. Would it not be possible for another man to go into business with a truck?

Q. Yes. A. It would.

Q. And own his own truck? A. It would.

Q. Well, now, if he owned his own truck, then he could buy gasoline from any person he wanted to, could he not? A. He could; but he could not buy it very profitably.

527 Q. That might be. Does not that depend upon whether he had enough business to justify his getting a good rate? A. I mean, buying it in trucks, he would get the same price the garages get, so that he could not sell it profitably, certainly.

Q. Might he not build a little tank, after a while, so that he could get a larger quantity? A. Oh, he could do anything.

Q. In that case, if he owned his own tank wagons, he could buy from everybody could he not—he could buy any gasoline, if he wanted to? A. I don't know whether he could or not. I don't think he could, as a matter of my personal opinion.

528 Q. Would you refuse to sell him gasoline? A. I would not want to sell him. I do not say that I would not sell him.

Q. You would not want to sell him, because he would be competing with you and with your tank wagons? A. No; not for that reason.

Q. Why wouldn't you sell to him? A. I just would not want him hauling out my stuff in competition with me.

Q. Can you not see that by your owning your tank wagon and allowing no gasoline but yours to be distributed in it that you are restraining the trade just as much as the man who owns the pump and does not allow any gasoline to be sold through it except his?

Mr. Burdeau: I object to that, as calling for a legal conclusion, Mr. Examiner.

The Witness: I cannot see it.

By Mr. Speer:

Q. You say you have lost customers, but you have increased your gallonage? A. Yes.

Q. I infer from that that you must have gotten other customers? A. I have.

Q. Is not that the rule in every community where there is competition—active competition—a man is losing customers, and on the other hand, he is getting 530
customers? A. That is true.

Q. There could not be any competition worth calling competition unless it took away, occasionally, some of your business: isn't that a fact? A. Why, sure.

Mr. Speer: That is all.

By Mr. Schekter:

Q. Have you ever seen a copy of the lease agreement under which the Atlantic Refining Company places this equipment with dealers? A. No, I have not.

Q. Do you know that, as a matter of fact, the dealer 531
has a perfect right to buy and sell the gasoline and petroleum products of any other person, dealer or corporation?

Mr. Burdeau: I do not want to be technical about that, but I believe those leases will be in evidence and will speak for themselves.

Mr. Schekter: Then we will let it rest with the fact that the witness admits that he does not know the terms of the agreement under which the Atlantic Refining Company is operating.

Examiner McCorkle: Certainly.

Mr. Zechiel: In fact, the agreement has been made a part of the answer.

By Mr. Schekter:

Q. I just want to clear up the case cited by you of F. B. Norman, of Wilmington. A. Yes.

Q. Who you say was approached by the Atlantic Refining Company and subsequently became a customer of theirs. A. Well, it has been too early—I presume he is going to become a customer. If I put a five-gallon pump in, he would.

533 Q. You say you had actually sold him a tank and pump prior to that time? A. Yes, I had.

Q. He had that at the time? A. He had that in the back.

Q. And he had it at the time that the Atlantic Refining Company negotiated with him? A. Yes; absolutely.

Q. And notwithstanding that, he agreed to enter into an arrangement with them? A. Well, he has got it in front there. I don't think he is going to be a poor enough business man to let me put gasoline in there.

Q. You are simply giving your guess, now, are you? A. They put it in there free of charge, according to

534 F. B. Norman, and according to his sales manager, Mr. McDonald.

Mr. Schekter: I move to strike out the witness's answer because it is not of the witness's own knowledge.

Examiner McCorkle: These men stated to him that fact.

Mr. Schekter: That is my objection, if the Examiner please.

Examiner McCorkle: The objection is overruled.

By Mr. Schekter:

Q. What has he done with the other tank? A. The other tank is still in there.

Q. Is he using it? A. This only happened this week, and as the sidewalk is blocked off in the front, I don't know what will become of the case.

Q. That is not answering my question. I say, is he still using the old tank?

Mrs. Zechiel: If the Examiner please, I think it is an answer to the question. If you just want to get further information, I have 536
no objection.

Mr. Schekter: I would like to have the question and answer read.

(The question and answer were repeated by the reporter as above recorded.)

By Mr. Schekter:

Q. Now will you please answer my question? Is Mr. Norman using the old tank? A. I presume he is.

Q. Do you know? A. I don't know. I have not been up into his garage.

Q. There is absolutely nothing, is there, to pre- 537
vent Mr. Norman's buying your gasoline or the gasoline of any other producer and selling it through the other pump and tank? A. That I have no knowledge of. I don't know.

Q. As far as you do know—and you have undertaken to testify in this case—is not that the fact? A. Yes.

Mr. Schekter: That is all.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. In that respect, what is the practice in your territory? Do garage men generally have installed more

538 *William O. Custer, Direct*

than one oil tank and pump? When I say garage men I mean retailers generally. A. Generally they do not; because, as far as we are concerned, I will not have anything to do—as far as putting in a leased equipment where there is already another equipment.

Q. Would you say that the instances where there is more than one equipment, are rare? A. They are rare, yes, sir.

Mr. Zechiel: That is all.

(Witness excused.)

539 Mr. Zechiel: Let the record show that W. C. Mallette and C. N. Cumberland are employees of the Bowser concern, and that if called to testify they would testify, in general, as previous Bowser witnesses have testified, both on direct and cross-examination. Is that satisfactory?

Mr. Nesbitt: Yes.

WILLIAM O. CUSTER was thereupon called as a witness and, having been duly sworn, testified as follows:

540

Direct-exmination by Mr. Zechiel:

Q. State your name and address, please? A. William O. Custer, 111 North Broad Street, care of Crew-Levick, Philadelphia.

Q. With what concern are you associated? A. With the Crew-Levick Company.

Q. What is your official position with that company? A. I am manager of tank stations.

Q. How long have you held that position? A. Since May of this year.

Q. Prior to that time what was your employment? A. General manager of the Massilon Electric & Gas Company, Massilon, Ohio.

Q. Your connection with the Crew-Levick Company is since May only? A. Yes, sir.

Q. What is the general territorial extent over which your company does business? A. The department over which I have charge is a part of Pennsylvania, part of New York, part of New Jersey, part of Delaware, and some of Maryland.

Q. The general line of business that your company is engaged in is what? A. Producing, refining and 542
marketing petroleum products.

Q. That includes gasoline and refined oil? A. Yes.

Q. And various lubricants? A. Yes, sir.

Q. In connection with the distribution and sale of your products, do you also deal in oil pumps and tanks? A. Yes, sir.

Q. For how long a time have you been engaged in that? A. Since my connection with the company that I am sure of, and I think previous to that time.

Q. You do not know how long prior to that time? A. I could not say how long.

Q. Do you sell such equipments? A. Yes, sir. 543

Q. Do you also lease or loan such equipments? A. No, sir.

Q. Do you know whether your company has ever leased or loaned such equipments to customers? A. I imagine they have, at some time, to some extent.

Q. But since your connection with the company they have not? A. They have not, no, sir.

Q. Do you know the number of pumps that have been sold by your company? When I speak of pumps, I mean the entire equipment, or whatever part you do sell, since your connection with the company. A.

I do not know the total number. The number last month was seventeen.

Q. You do not know prior to that time? A. I should say seventy-five, or maybe more, since my connection with the company.

Q. To whom did you sell such equipments, in a general way, to what class of people? A. To garages and accessory stores, grocery stores, one to a jewelry store.

Q. A jewelry store? A. Yes.

Q. In connection with your business have you had
545 occasion, since you have been employed by the present company, to travel about over your geographical area? A. Yes, sir, quite frequently.

Q. In doing so have you come in contact with the retailers on your product? A. Quite a lot, yes, sir.

Q. Do you know whether or not your company has lost business since you have been connected with it, because it refused to install oil tanks and pumps for a nominal consideration only? A. We have lost some customers by reason of that.

Q. When you say "some," could you be more specific about it? A. I would not even guess how many. It is quite a number. It happens every day or two.

546 Q. Every day or two? A. Yes.

Q. Do you know what is the occasion of your loss of such customers in detail, or are you personally acquainted with that? A. Yes; by reports more than by personal experience; by reports of our salesmen and of our tank station agents.

Q. Those reports are to you, are they not? A. They are to me, yes.

Q. What have been the general circumstances of such losses of business? A. Most usually the case where we will not lease or loan equipment, and where some competitor has seen fit to lease or loan the equip-

ment. I want to be clear on that question before that. I do not want you to be misled by that answer. I said that we had lost some customers. I do not mean that, as a whole, our gallonage had not increased. We lose one customer one place, by reason of that, and go out and get one or two more, maybe, some place else; so that the total of our gallonage, possibly, has increased; but we have lost some particular customers.

Q. In that connection, have you ever been able to supply the loss of business because of this practice by selling goods to a retailer who had installed, at 548
the time, an oil tank and pump under a lease contract with some other company that was selling goods to them? A. Do you mean, have we been able to put in our goods in somebody else's tanks in a leased tank that somebody else has leased to a customer?

Q. I was not trying to go quite that far, no. I meant only in this connection: You lose a customer, say John Jones, because some oil company supplies him with an oil tank and pump as testified. Now, you also say that you have not lost gallonage, because you have gotten other customers to take the place of the customers you lost. Now, with respect to these customers you get subsequently to replace those you have 549
lost, are those customers retailers who are already under lease contracts with a competing oil company? A. It is not always the rule, but that has been the case in some instances. We have gone out and been able to sell equipment to a customer who has in lease or loan equipment of some of our competitors, by reason of some misunderstanding arising between the customer and the competitor.

Q. You say that has been the usual rule? A. No; it has happened.

Q. That is rather the exception? A. Yes.

Q. Is it a fact, then, that most of these customers that you get to replace the lost customers about which you have testified are customers who are not under lease contracts? A. Yes, sir.

Q. Are those customers, if you know, usually new customers in the retail oil business, or are they established? A. A big percentage of them are new.

Q. When you did get those people who were new at the game, who were just starting in the business, in those cases did you sell them a pump outfit? A. Yes, sir.

551 Q. Who are your competitors in your territory? A. The Gulf Refining Company, the Texas Company, the Atlantic Refining Company, in one territory the Standard Oil Company of New York, and also the Standard Oil Company of New Jersey, the Hearn Oil Company, and quite a number of others.

Q. Do the facts about which you have testified apply generally with respect to each of these competitors of yours and their territories—your loss of business and your replacing of business and, in general, the things to which you have testified? A. I should say so, yes, sir.

552 Q. What has been your experience—do retailers of gasoline usually have installed more than one oil tank and pump equipment for the distribution of gasoline? A. In some localities they have, more especially in Philadelphia you will find a garage with one company's pump on one side of the door and another company's pump on the other side of the door, and possibly if there is a back door to the garage, they have still another company's pump.

Q. Is that a frequent occurrence in your competitive area, or is that an unusual situation? A. I would rather say it was the unusual situation. We possibly have in quite a number of places in Philadelphia, but

a small per cent as compared with the total number of garages.

Q. From your experience with your company and your company's business, do you think the practice of leasing and loaning these equipments under conditions and understandings that they are not to be used in connection with the distribution of other gasoline products than those of the lessor, is a sound business practice?

Mr. Speer: I object as immaterial, irrelevant and incompetent.

554 Examiner McCorkle: The objection is noted. Proceed.

The Witness: I do not think so.

Mr. Zechiel: That is all.

CROSS-EXAMINATION by Mr. Nesbitt:

Q. Mr. Custer, I am not just clear whether the Crew-Levick Company has engaged in the practice of leasing equipment since your term of service with them began? A. No, sir, they have not.

555 Q. But at one time the company had engaged in that practice? A. To some small extent; to no great extent. I do not believe our records will show that there are over about ten pumps that were originally put out on such an agreement, and most of them have been taken in since that time.

Q. Has your company, to your knowledge, considered engaging in that practice recently? A. Yes, sir. We have had it under consideration ever since this matter has been agitated before the Federal Trade Commission, awaiting their final action on it, to determine what to do. If the practice is going to be

indulged in generally, I imagine we will have to go into it ourselves; but we would very much prefer that it would be stopped.

Q. Do you know the reason why the company did not go into the practice generally? A. It was a very expensive practice to them, what experience they did have with it. It looked like folly for the reason that it requires a big investment, and you usually put that investment into a place that is a very poor credit risk; and the ordinary small garage usually changes hands quite frequently, and it causes you more or less trouble;
557 so that we would rather keep away from it if it is possible, if all of our competitors would get the same slant on it.

Q. Then it is true that the company did not engage in the practice simply because they thought it an inconvenient business practice? A. It is a poor business practice—a bad business practice.

Q. Bad from what point of view? A. The tremendous investment that it requires. When you go out and loan a man a pump and tank and hose and all that equipment, he will not take care of it at all, because it is your equipment; but if it is his own, and he has his money invested in it, he will take care of
558 it and try to maintain it, and see that it is kept in condition.

Q. In other words, your company views it as an unprofitable policy? A. It is unprofitable.

Q. And that was the reason, was it, why the Crew-Levick Company did not engage in the practice? A. It was unprofitable, and it was not good business.

Q. From the point of view of profit? A. From the point of view of profit and business ethics.

Q. Would you say that the consideration of profit was the dominant consideration in determining the policy of the company? A. That is usually the dominant feature of any business.

Q. The Crew-Levick Company, in your territory, has as many customers now, has it not, as it had at the time that you came with the company? A. I would hate to say, under oath, because I don't know how many they had when I came.

Q. I know you could not give figures? A. I hope they have.

Q. You regard your trade as numbering as many customers as it did at that time? A. I think so. I hope so, at least.

Q. You are marketing in your territory, are you not, all the product that is available to you to supply? 560
A. Yes.

Q. When you engage in this practice of selling pumps to customers, how do you handle those pumps? Do you get them into storage from the manufactories, or do you just negotiate individual sales, and then send to the manufacturer for the individual equipment? A. We get them into storage, into our warehouse.

Q. And then sell them out? A. And then sell them out from there.

Q. You buy those pumps and other equipment direct from the manufacturer? A. Direct from the manufacturer. 561

Q. You do not buy them through a local sales agent of the manufacturer? A. Well, yes, from the local representative of the manufacturer, who calls on us. We buy them from him.

Q. You pass him the order? A. We pass him the order.

Q. You do not deal direct with the headquarters of the company, at all? A. That is dealing direct with the headquarters of the company, I take it. It is the representative of the factory, of the manufacturer—their direct representative. I do not see how, if you

562 *William O. Custer, Cross*

went right down to the factory, you could deal more directly than if the factory sends a man to your office.

Q. What I mean is this: Do you make those purchases through a district salesman for the manufacturer? A. No.

By Mr. Speer:

Q. Do you buy them in quantity, or just singly, as as you need them? A. We buy them in quantity.

Q. Does your company put in any large service stations in the larger cities where you operate, into
563 which the automobile can drive and be supplied with gasoline? A. We have not put in any lately. We have three service stations in operation. This year we have not built any new ones.

Q. It costs considerable to buy a location and equip a service station of that kind, does it not? A. It is quite expensive.

Q. That is a practice amongst the marketers of gasoline, is it not, as well as the use of these smaller pumps? A. Yes, sir.

Q. And of course in that service station they have their pumps and tanks, similar to these curb pumps? A. Yes, sir.

564 Q. Something of the same kind? A. Yes.

Q. Don't you think that is more expensive, to undertake to serve a community that way, than to put in a few curb pumps which cost to install and equip? A. I don't think so, no. It depends a lot on conditions. It might be in one case and it might not be in another.

Q. Does your company establish filling stations which are operated by your own employees or agents, making them agencies for the distribution of your product? A. I don't know just exactly what you mean. You mean, do we go out and install a pump some

place and then pay somebody a commission to operate that pump?

Q. Yes; or a salary to look after it? A. No, sir, except at our service stations, our regular service stations. We do not go out to somebody who has a location or a good place to put a pump, and install the pump and then ask him to run it for us, or hire him, or pay him a commission.

Q. You do not do that? A. We do not do that.

Q. It is a fact that quite a few of the large marketers do adopt that system of getting their product to the public, to a certain extent, is it not? A. I 566
have understood so. It is merely another way around this same question.

Q. So far as that is concerned, there is just as much objection to this as to the loaning system? A. Yes; the same thing.

Q. Your objection being that, being their station, you cannot sell any gasoline through it? A. That is the idea.

Q. Is it not their purpose in establishing the station, in order that they may be able to reach the ultimate consumer with their product under their own brand, and to develop their business in that way? A. That is one of the ideas; and to eliminate competition. 567

Q. Then, as a matter of fact, Mr. Custer, your company seems to be, so far as the handling of gasoline is concerned, more of a jobber? You sell in quantity to retailers who are dealing with the public, and you are not endeavoring to reach the ultimate consumer with your product at all? A. Except through the service stations I mentioned a while ago.

Q. I think you said in the beginning that you do not seek to sell to the owner of the automobile except as he may come to these few stations that you have? A. Well, yes; but we try to create a market for our

goods, and the pumps that we sell have our trade-mark on them.

Q. After that pump is installed, with your trade-mark on it, you expect him to sell your gasoline through it, do you not? A. Yes.

Q. Isn't it a fact that you would not permit him to sell any other gasoline through that pump with your trade-mark on it? A. That is one of our talking points, that we do not ask them to sign a contract to use our gasoline alone, even though he bought the pump from us and has not paid for his pump on
569 the installment plan. Say that he has paid half of his pump, and, for some reason or other, our service or gasoline was not satisfactory, he can buy your gasoline tomorrow. We do expect him to buy our goods.

Q. So long as he kept your trade-mark over his pump, you would insist that he sell your goods through it, would you not? A. We request him to; but we have no hold on him, no way to make him.

Q. Do you mean to say that you will knowingly allow somebody to sell something that is not your product, as your product? A. We do not if we can avoid it; naturally not.

570 Q. Naturally you would not? A. We do not tie them up into a contract that they will use only our goods.

Q. Don't you think if you found a man who had your trade-mark on his pump and was selling somebody else's gasoline through it, that you would endeavor to stop him? A. I don't know whether we would or not; because there is quite a number of pumps, quite a number of customers who the companies do what they call split the business with—your company will have it this month and we will have it the next month; they are friends to both, and

your goods are selling through the pump one month and ours the next month.

Q. With the same sign on it? A. With the same sign on it.

Q. Is not that a fraud on the public, to make them think they are getting one brand of gasoline when they are getting another? A. It may be.

Mr. Burdeau: I object to that question as involving the assumption that any sign on a tank is a guarantee of the contents. I do not think there is any proof here that it is.

572 Mr. Speer: I think some things would be assumed without proof.

Mr. Burdeau: That is the reason I object to that particular question, because it involves just that assumption. I personally cannot see how a sign on a tank guarantees the particular contents of that tank.

Mr. Nesbitt: As a matter of fact, it always does.

Mr. Burdeau: Let us prove it.

By Mr. Speer:

573 Q. Is it not a fact, Mr. Custer, that the purpose of putting the sign with the trade-mark upon the pump through which the gasoline is furnished, is to show the brand of gasoline that is being furnished by that pump? Isn't that what it is done for? A. To some extent. It is merely to advertise the name of the company as much as anything else, not only their brand of gasoline. Crew-Levick does not mean gasoline. It means the name of the concern that handles gasoline and motor oils.

Q. And when you have Crew-Levick, the name Crew-Levick on a pump, isn't that holding out to the

public that they are getting Crew-Levick gasoline? A. Yes.

Q. That is the way the public regard it, is it not? A. Naturally.

Q. Now, you say in some of the garages there are from two to possibly three pumps, and in the majority but one. Is it not a fact that it is the large garages that have a large business that maintain more than one pump as a rule? A. I should not say so, no. I do not know that you can do it now but pretty nearly anybody two or three months ago, or three or four
575 months ago, could have the Texas Company put in a tank and pump and then the Atlantic or Gulf, or most any one come along and put one right across the roadway from it.

Q. Is there a practice to put two pumps in a small garage that has a very small amount of business? A. Not a general practice, but it is done.

Q. It is done in some cases? But usually a small garage where the business is not large would not want to be bothered with more than one pump? A. No; they would not want to be bothered, but the oil companies have had a practice of going out where they could and get them to put in the other pump.

576 Q. The garage man does not need to put it in unless he wants to? A. No.

Q. Is it not likely, if he had not much space and a small business, that one pump is all he would want? A. That is all he would want, yes.

Q. And if he owned it, himself, it is all he would put in—one pump? A. Certainly.

Q. There are, of course, nowadays, quite a lot of little garages in every town? A. Yes.

Q. So that you may find, on one side of the street, a garage with one man's pump and sign, and across the street a garage with another pump and a different sign? A. Yes.

Q. So that the automobilist who is driving along and sees two signs of different gasoline, can choose which he wishes to have put into his automobile? A. Yes; that is quite true.

By Mr. Burdeau:

Q. I would like to know, in absolute fairness, how you will answer this question: Do you know enough about the retail distribution of gasoline to say whether or not it is the sign on the pump, or the personality of the garage man or dealer which determines whether or not an automobilist shall deal there? In other 578
words, does the garage man attract his customers through his service and his personality and other business qualifications, or are his customers attracted by the sign on the pump? A. That is a pretty hard question to answer and answer intelligently. I would say in your own town, where you are acquainted, it is the personality of the garage man alone; but if you were driving away from your home town, over to a strange town, you might look for a gasoline which you knew the trade-mark of.

Q. Do you believe that to be the general rule? A. That is, I would say, the general rule; but in your home town, where you are well acquainted, you are 579
likely to buy from the man you know best, regardless of the kind of product that he handles.

Q. I want to be complete about this, and absolutely fair about it. Do you believe it to be the general rule that when a motorist leaves his own town, where he knows some garage manager, he will seek a place bearing the sign of a brand that he knows? A. He is more likely to do that.

By Mr. Schekter:

Q. If the Atlantic Refining Company wants to protect its trade-mark and its trade name, the only way

580 *William O. Custer, Cross*

it can possibly do it is by insisting that through its equipment there shall only be sold and furnished the Atlantic gasoline? A. I should say so.

Q. In the efficient and proper distribution of gasoline to the public, is it not true that throughout Pennsylvania it would be a financial impossibility to establish service stations in the sparsely settled districts? It would be ruinous financially to do that? A. Yes.

Q. And the curb pump is the only effective method of making that distribution? A. I would say so.

581 Q. Have you not found out, in your experience with the Crew-Levick Company, that it is not possible, in many cases, to persuade a person who has a proper location to buy a pump or pump equipment? A. I do not say so.

Q. Well, what has been your experience? A. The man that has got a good location, you can undoubtedly go to him and sell him a pump. It is not necessary to give him one.

Q. Does that mean that you have not found, in your experience, or in the experience of your employees, that there are many persons who have locations, desirable locations, who cannot be persuaded to make an investment, or who have not the funds to 582 make an investment in an equipment of that sort? A. A. I may be pretty thick, but I do not get the point you have got in mind. Do you mean, say, John Jones has a good location here, and we are unable to induce him to spend the money to put in a pump there, because he has not got the money?

Q. Or is unwilling to make the investment? A. No; and we have found that John Jones, on the corner, who has a good location, if we go to him and interest him, and show him the advisability and the profit of installing a pump, somebody else comes along and says: "What is the use of your buying it? We will give it to you."

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Q. That is not exactly my question. You are assuming that he is meeting a competition between a person who wants to sell outright and a person who wants to lease. My question to you is this: Whether, in your experience you have found persons owning or occupying desirable locations along the road, throughout Pennsylvania, who, notwithstanding they have desirable locations, either have not the money, or are unwilling to invest it in the pump equipment with a view to furnishing oil and gasoline products to the public? A. I have not found any such cases as that. I do not believe that there is a case where a man owns a piece of property, and where he has good traffic advantages, where you can go to him and show him that with a certain investment he will get a return of ten or fifteen, or twenty or twenty-five per cent a month, that you cannot sell him. He will go around some place and dig up the money.

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Q. Do you personally endeavor to place these locations? A. Do I personally?

Q. Yes? A. No.

Q. Who does, with your company? A. We have about fifteen men that do.

Q. And they make their report directly to you? A. Yes.

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Q. Would such reports as they make cover that point? A. To some extent. If it involves a credit risk, it does.

Mr. Schekter: May I ask whether it is the intention of the Government to produce such men who have actual familiarity with the situation.

Mr. Zechiel: Not at all.

Mr. Schekter: Then we merely state that we shall take it up as a matter of defense or rebuttal. I have no further questions.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. On the pumps which you have placed, sold, and through which your gasoline is distributed, do you have signs of any kind designating your gasoline? A. Yes, sir; in most instances, "Crew-Levick brand."

Q. And that is whether you have leased the pump—I believe you say you have no cases at all, now, where you have leased equipment? A. I don't think we have any leased equipment out at all.

Q. So that these signs are on pumps owned by the
587 retailers? A. Owned by the retailer, yes, sir.

Q. Is it not a fact, Mr. Custer, that there are a great many brands of gasoline being sold by competing oil companies, all of which are considered first-class gasoline? A. Yes. I might add to that that there are a number of companies selling the same gasoline under different brands. I mean by that there is a number of refiners around over the United States that have no marketing organizations, and they naturally must find a market for the gasoline they make, and they will sell it to the Jim Jones Oil Company, and he sells the gasoline under the "Cocoa Brand." They will sell it over to another Tom Smith Oil Com-
588 pany that sells it under some other brand, and when you get down the line you will find the gasoline coming from one refinery is sold under possibly four, or five or six brands—the same identical gasoline.

Q. Do you believe that the present practice of selling gasoline of different companies through the same oil tank equipment has really resulted in fraud upon the public? A. Fraud, as I understand it, is representing something to a man and then giving something of inferior quality. Most of the gasolines that are on the market have approximately the same gravity; they

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have approximately the same initial and end points, so there is really very little difference in the gasoline that is sold for motor cars. There is some difference, of course.

Q. So that, so far as the sign is concerned, it does not protect the public, in your opinion, one way or the other? A. Not a great deal, no.

Q. Leases and loans that are made by oil companies in your competitive field, are they made to large garages or large and small as well? A. I would say large and small.

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RE-CROSS EXAMINATION by Mr. Speer:

Q. If you were purchasing gasoline from some manufacturer for your automobile trade, would you not require a gasoline of a certain grade or quality to be furnished to you, suitable for that class of trade? A. Are you talking of me, now, as a consumer—if I am buying gasoline for my car?

Q. Yes? A. The average consumer does not ask anything about it—does not know anything about gasoline.

Q. No; and it is a fact that once in a while he gets a poor supply, does he not? A. Yes. A lot of the 591
time they get very bad gasoline that is not the fault of the oil company, that is, the distributing company, because there is a lot of unscrupulous garage people and unscrupulous dealers who will mix something else with their gasoline and sell it to the public, and sell it under your trade name and under my trade name, which we cannot control and cannot stop.

Q. That, of course, is a fraud on the public. There is no question about that? A. Yes.

Q. And every one who has a trade-mark, a brand, selling under that brand, naturally endeavors to pre-

vent the sale, under his brand, of an inferior grade of gasoline? A. As far as he can, yes.

Q. Because if he allowed that to be done, it would ruin the reputation of his gasoline, would it not? A. Yes.

Q. And the purpose in having a trade brand is to establish a reputation for it, so that people, when they see that brand, will be satisfied that they are getting a good grade, suitable for their purposes? A. That is the idea, exactly.

Q. Now, then, if you do not make it yourself, and
593 you want to keep up the reputation of your brand, if you buy it from some other manufacturer, you have got to test it and see whether it comes up to the specifications of the brand that you are selling, if you want to be sure to protect your trade? A. Certainly.

Q. Then, if you require the gasoline to be of a quality, the grade which you are selling, it of course does not make any difference whether you make it or whether you have somebody else make it, that is true, is it not? A. Yes.

Q. Is not that true of lubricating oils—that you have a formula under which they are manufactured, and that is your brand, and you can have any refiner make
594 your brand of oil according to your formula? A. Not necessarily so.

Q. If he is an honest man, and works out the formula properly, he will make the same kind as you make yourself. A. If it was made from the same crude and of the same viscosity, fire and flash test, and all that sort of thing, it would be just the same, or thereabouts.

By Mr. Nesbitt:

Q. Mr. Custer, what do you mean when you are talking about brands? What do you have in mind

when you have been talking about brands in connection with gasoline? A. The trade-marks that the different refiners have.

Q. The registered trade-mark? A. Yes.

Q. You have such a mark? A. Yes, sir.

Q. And you put a value on that mark in your own territory, do you not? A. Yes, sir.

Q. And you try to protect that mark? A. So far as we can, yes.

Q. If anyone attempted to make what you thought was an infringement of that mark, you would seek redress for that? A. Yes. 596

Q. No matter what the nature of that infringement might be? A. Yes.

Q. If you regarded it as an infringement of your mark, you would attempt to prevent it? A. Yes.

Q. If you were, yourself, driving through a strange territory, would you take any gasoline that you first saw the sign of, or would you choose your own gasoline? A. I, myself, when I am in a territory where I cannot get our own gasoline, take, usually, the first thing that comes along.

Q. But you take your own if you can get it? A. Yes.

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Mr. Nesbitt: That is all.

Witness excused.

G. W. LANE was thereupon called as a witness and having been duly sworn, testified as follows:

Direct-examination by Mr. Burdeau:

Q. State your name and address, please? A. G. W. Lane, Watertown, New York.

Q. What is your business? A. The oil business.

Q. What company are you connected with? A. The Northern Oil and Fuel Corporation.

Q. That company is engaged in the distribution of gasoline and other petroleum products? A. Petroleum products only.

Q. What territory does your business cover? A. We do business in Syracuse, and go north up around Plattsburgh, Elizabethtown, and work down east to Utica.

Q. Is your business confined to the State of New
599 York, or do you do business in some other state? A. I am confined to the State of New York.

Q. You do not go out of the State of New York? A. No.

Q. Who are your competitors in your territory? A. The Standard Oil Company and the Peoples Oil Company.

Q. Any others? A. No, sir.

Q. Does your company make a practice of leasing oil pumps and tanks, or loaning them to garage owners and other retail distributors? A. The Standard carries that system.

Q. Does your company do it? A. Yes.

600 Q. How long has it engaged in that? A. We were forced to go into the leasing of curb pumps, to save our business, due to the fact that the Standard leased curb pumps to most anybody that wanted to dispense gasoline, under a one dollar a year rental basis.

Q. When did you begin that practice—your company? A. About a year after starting in business.

Q. When did you start in business? A. 1914.

Q. So then, you began the practice of leasing pumps in 1915? A. We had to earn the money before we could do it.

Q. About how many equipments have you under lease, now, to your customers? A. About thirty.

Q. Did your company deliberate over this matter at any time before engaging in it—hesitate and consider this matter at all before it engaged in it? A. No, sir.

Q. What prompted your company to engage in the practice of leasing and loaning oil pumps? A. To save our business.

Q. Be a little more explicit about that, please. What had happened to your business? A. We probably would not have had any.

Q. You are certainly getting to the results all right, 602
but I want you to tell me the steps which led to the taking away of your business. What was happening that was taking the business away from your company? A. If we did not lease curb pumps?

Q. Yes? A. I just told you.

Q. Was it because some of your competitors were doing that? A. They were doing it.

Q. And the people to whom you had been selling gasoline would not purchase your product unless you put in these equipments? A. The situation was just this: A man was very foolish to put in three hundred, or four hundred, or five hundred dollars into a curb outfit and pay his money for it when he could get it 603
for one dollar a year. We have two systems in northern New York. The system we work to quite an extent is that we put in a curb outfit and charge one cent a gallon on the curb pump over and above the tank wagon price, and when said amount amounts to the amount of the purchase price of the curb pump, we issue a statement and make a billing out on the curb pump and receipt it in full, and the curb pump reverts to the lessee of the pump.

604 *G. W. Lane, Direct*

Q. You have not yet understood me. Your business is the selling and distribution of petroleum products? A. Yes.

Q. You are not primarily interested in the pump business? A. Not very much, no, sir.

Q. You told me you were forced to adopt the practice of leasing pumps? A. Yes.

Q. Was that because you had been losing customers? A. Yes.

Q. And was it because your customers were dealing with another oil company? A. Yes.

605 Q. What oil company was that? A. The Standard Oil Company and the Peoples Oil Company.

Q. About how many customers do you think declined to deal longer with your company because of receiving equipment from another company? A. It would be quite a number. I would not be in a position to tell you just the number of people that we might have lost if we had not entered into competition.

Q. Has it happened recently that you have lost a customer because of this practice? A. No; we have not lost anything recently.

Q. Is it because you have installed the same kind of
606 equipment yourself? A. We installed the Bowser curb pump and the Wayne tank outfit.

Q. You have given some consideration to this question as a matter of business economy, have you? A. Yes, sir.

Q. Is it your opinion that it is sound business to rent or lease these pumps to retail dealers?

Mr. Speer: I object to that as incompetent, immaterial and irrelevant.

Examiner McCorkle: The objection is noted. Proceed with the answer.

The Witness: It works a hardship on the jobber where he would have to make an expenditure of four hundred or five hundred dollars in thirty-five or forty different places, depending on the territory he is covering.

By Mr. Burdeau:

Q. By "jobber" you mean people engaged in business like yourself? A. Yes, sir. We are jobbers.

Q. Your objection is that it works a hardship of the jobber? A. Yes, sir.

Q. And as I understand it on account of the excessive investment? 608 A. Yes, sir.

Q. Is there a fair return on that investment? A. Why, if you have the money to make the investment and you can ride along with it long enough to obtain back a profit on the sale of your gasoline to cover your overhead and your expense of installing your outfit, then you have velvet again; you would have a curb outfit and a station which would belong to yourself, and perhaps would not be disturbed by anybody else. Naturally, then, you would realize a net gain on it. But so many pumps are installed where a party wants to buy, maybe five thousand gallons of gasoline a year, or ten thousand gallons, and it is a 609 very poor investment. However, we are forced to put a curb pump and tank in to that buyer, whether he buys two thousand or one hundred thousand gallons, if we want to hold him as a customer.

Mr. Burdeau: I think that is all.

CROSS-EXAMINATION by Mr. Speer:

Q. Do you sell your gasoline under a trade-mark or brand? A. Yes, sir.

610 *G. W. Lane, Cross*

Q. Do you endeavor to get your gasoline to the automobile owner—do you deal with him direct? A. I deal mostly through the local dealer.

Q. That is, your practice before you began leasing the pumps, was not to attempt to sell to the ultimate consumer, but to sell to the local dealers? A. We sold to local dealers and consumers, both.

Q. You mostly sold to the dealers? A. Yes.

Q. Did you have tank wagons? A. Yes.

Q. You owned the tank wagons, of course? A. Yes.

611 Q. Now, what other method do the companies have of distributing their gasoline under their trade brand to the consumers besides having these little curb filling stations? A. The Standard Oil Company will go to a private owner and put in a gasoline outfit, in some instances at a rental of five dollars a year, and take care of that at the regular wholesale price, regardless of the dealer. Our system, up in our section, is that we are overselling the Standard market one and a half cents a gallon. We cannot afford to live under the same prices they do, and also give certain protection to the dealer which we figure he is entitled to, and does not get under the Standard Oil system, and does get un-

612 der the Northern system.

Q. You are still speaking of these small pumping outfits. What other method is there of bringing the product to the consumer besides these little pumping outfits? A. You have to bring it to the consumer with a tank wagon.

Q. Do they have any what they call service stations in your territory? A. Yes.

Q. What are those? A. Mostly owned by different people that take them themselves.

Q. The Standard Oil Company has not erected any of those large serving stations in your district? A. No, sir.

Q. Have any of the oil companies done that? A. No, sir.

Q. If they had those service stations erected, they would sell the automobiles their own gasoline at those service stations? A. Yes.

Q. They would not sell anybody else's? A. No.

Q. You would not expect to sell your gasoline to them at those service stations, would you? A. No.

Q. They establish them for the purpose of selling their own gasoline? A. Yes.

Q. Is it not more expensive to put in these large service stations which you see in many places, so as 614
to get the gasoline to the consumer, than it is to put in these little pumping outfits? It would cost more money, would it not, to erect those service stations than it does to put out a few of these pumping outfits? A. Not if you figured on the net earning of those stations.

Q. Of course the stations would earn more, but of course their investment is more? A. Yes.

Q. But if you were compelled to do that in order to get your share of the business, it would require a considerable investment on your part, would it not? A. It would, and it would not. We would realize, if we had a bungalow filling station, such as you refer 615
to—we would naturally sell more gasoline, and we would not have to sell it at wholesale. We would market at retail. Figured that way, your curb outfit is more expensive than your filling station.

Q. How does it come if that is true that these companies prefer to use small pumping outfits, instead of erecting large service stations? Do they not do it because it is a cheaper way of getting it to the public? A. I hardly believe that.

Q. They do get the business at these little pumping outfit stations? A. They get the business there, yes.

616 *G. W. Lane, Cross*

Q. And you are compelled to adopt the same system in order to get the business? A. Yes.

Q. Otherwise it would go away from you? That is a fact, is it not? That is why you put them in, and that is why you began the leasing system—so that you could have your share of the business? A. The filling stations are good investments.

Q. What do you mean by "filling stations"? A. I mean just what you are referring to—bungalow filling stations.

Q. Where a man drives in with his automobile? A.
617 Yes.

Q. You have got to get the property and you have got to erect a building there? A. Yes.

Q. And you have got to have space to accommodate more than one automobile at a time, if you are going to have much of a station, have you not? A. Yes; but your net gain would be far greater.

Q. But when that station was established, the owner of it would be selling his own gasoline, and you would not get any of that trade, would you? A. That might work out that way, but we might build stations, too, and sell our own gasoline.

Q. That would cost you money, the same as pur-
618 chasing pumps, would it not? A. Yes; but you gain, on those bungalow stations, on the curb.

Q. You think they are more profitable? A. If we had bungalow stations, we would not be selling gasoline at twenty-five and a half cents. We would be selling at twenty-eight cents, unless we were forced to sell at twenty-five by the Standard Oil or some other company.

Q. Then if, instead of these curb outfits, if the marketers put up these bungalow or service stations, you say gasoline would be selling higher? Is that what you mean? A. We would be selling to meet competi-

tion. The price at a filling station is higher than it is off the tank wagon.

Q. You say it would sell higher at those service stations, would it, according to the way you figure? A. You would have to sell higher.

Q. And the public would pay more for it? A. The public would pay the regular retail selling price.

Mr. Speer: That is all.
Witness excused.

620

EDWARD J. SUOR was thereupon called as a witness and having been duly sworn, testified as follows:

Direct-examination by Mr. Burdeau:

Q. State your name and address, please? A. Edward J. Suor, Buffalo, New York.

Q. What is your business? A. Distributor and jobber of petroleum products.

Q. Are you connected with any company or corporation? A. Yes; a corporation.

Q. The Suor Oil Company? A. The Suor Oil Products Corporation. 621

Q. In what territory does that company do business? A. Western New York, Erie and Niagara counties.

Q. It does not go outside of the State of New York? A. No.

Q. Who are the competitors of your company? A. The Standard Oil Company of New York, the Sinclair Refining Company, Elmer E. Harris & Company, the Kendall Refining Company, the Pease Oil Company, the Fails Lubricating Company.

622 *Edward J. Suor, Direct*

Q. Does your company make a practice of leasing and loaning oil pumps and tanks to retail distributors and dealers? A. We do not make a practice of it, no.

Q. Have you, in any case, leased or loaned pumps and tanks to retailers? A. Only in such cases that we were obliged to do it in order to hold our trade.

Q. When did you begin to do that? A. 1916.

Q. What prompted your company to engage in that practice? A. We did not engage in the practice. We only did it in certain cases in order to hold the busi-
623 ness, where we were supplying a certain trade and efforts were made by the other companies to install on the lease basis the tank and pump; and in such accounts as we thought were good accounts, and would make a profitable return, we kept those. Others we let go.

Q. You are referring to accounts which you already had? A. Which we already had.

Q. About how many installations have you outstanding now? A. Not over ten or twelve.

Q. And those were all given or leased to men or concerns that had previously been buying your products? A. Absolutely.

624 Q. What companies, if you know, offered to install tanks and pumps in these cases that you have referred to? A. The Sinclair Refining Company, the Standard Oil Company, Elmer E. Harris Company, the Kendall Refining Company.

Q. You have given some consideration to that as a business problem, a matter of business economy? A. I have given serious consideration to it.

Q. Do you regard that as a good business proposition?

625

Mr. Speer: That is objected to as immaterial, irrelevant and incompetent.

Examiner McCorkle: The objection is noted. Answer the question.

The Witness: Absolutely not.

By Mr. Burdeau:

Q. Will you state the reasons why you do not regard it as a good business proposition? A. First of all, the investment that would be necessary to meet that kind of competition. In our district, within the last two years, we have had installed between three hundred and four hundred pumps and tanks—I would say five hundred. Figuring on our proportion of that, of prospects which we had a chance of getting, had we met that competition, it would have cost upwards of seventy-five thousand dollars to one hundred thousand dollars.

626

Q. And what is the total capital of your company? A. One hundred thousand dollars.

Q. There is no fair return on capital so invested, is there? A. In some cases; but mostly I would say no.

Mr. Burdeau: That is all.

627

CROSS-EXAMINATION by Mr. Speer:

Q. You seem to have quite a lot of competition up in your territory? A. We have got plenty of it, without the pumps and tanks.

Q. I take it from what you say that the competition has been increasing there of late? A. Considerably and consistently.

Mr. Speer: That is all.

Witness excused.

628 *Walter H. Goodrich, Direct*

WALTER H. GOODRICH was thereupon called as a witness, and having been duly sworn testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address, please? A. Walter H. Goodrich, corner of College and George Street, New Haven, Connecticut.

Q. With what concern are you connected? A. Walter H. Goodrich & Company, Incorporated.

Q. What is your business? A. The sale and dis-
629 tribution of petroleum and its products.

Q. How long have you been engaged in that business? A. Since the first of January, 1906.

Q. Had you had any experience prior to that, yourself, in the oil business? A. Not on my own account, but as an employee of the Standard Oil Company, about ten years previous to that.

Q. That is, the New York corporation? A. I think it was the Standard Oil Company of New York at that time.

Q. What were your duties when you were employed by the Standard Oil Company of New York? A. I was first employed as a bookkeeper, at nine per. When
630 I left them, I was agent, employed at New Haven, in charge of New Haven and four other stations.

Q. That was the distributing end? A. Yes.

Q. Since 1906 you have been connected with your present organization? A. Yes.

Q. What are your duties in that company? A. At the present time?

Q. Yes? A. I am the president, treasurer and general manager of it.

Q. What is the territorial extent of your business? A. The City of New Haven and the immediate vicinity.

631

Q. You are acquainted with the distributing units, the various garages and other retailers of your product? A. Oh, yes.

Q. Do you, in connection with your business, handle pump equipments? A. Only as a convenience to the trade, as it suits our relations with them. We handle it merely as a convenience for them.

Q. Do you lease and loan such equipments? A. Yes; lease them.

Q. You lease them? A. I say we lease them. We put out these tanks and pumps. We do not bother anybody to sign an agreement, because we just take the chance; that is all.

632

Q. But you do have an understanding that they are to use your gasoline? A. It is put out with the purpose of getting them to buy our gasoline.

Q. Do you sell any such equipments? A. Yes; when it suits the customer, we procure the equipment and sell them, on whatever terms suit them. In fact, we try to educate them to believe that they are better business men when they buy their own outfits.

Q. How long have you been leasing such equipments? A. Oh, I should say two years.

Q. Prior to that time you had been selling? A. Yes.

633

Q. What was the occasion of your changing your practice from the straight sale policy to the lease and loan? A. It was necessary to maintain our output that we do something of that kind.

Q. More specifically, in that respect? A. Our competitors loaned these equipments out to the trade and our customers came to us and said that they could get these on a nominal basis of one dollar a year and they gave us the privilege of supplying them with equipment or they would take up with the other proposition.

634 *Walter H. Goodrich, Direct*

Q. Did you lose any customers because of this practice, because you refused to install them? A. That is a hard matter to say. We have lost trade since this practice was started.

Q. You mean you don't know that the loss of any particular part of your trade was due directly to this practice of leasing and loaning pumps? A. We sought to forestall anything of that kind as best we could. There is no doubt but what we would have lost trade.

Q. Because of this practice, you mean? A. Oh,
635 yes.

Q. Was that an appreciable amount of business that you lost in that way? A. Well, the increase in the output of gasoline and the quantity used has been so great that when you pin the matter down to a matter of gallonage, it would be hard to answer that question.

Q. I am not speaking with respect to gallonage, at all. I am speaking with respect to customers. A. That is a very difficult matter to answer intelligently. In this oil business things change overnight, and five years ago we were marketing gasoline under an entirely different scheme than we are today. We
636 were, at that time, selling gasoline to the consumers direct, when they bought it, and to the garages to sell again. Then the demands of the automobile trade were such that the curb pump came into existence and we simply followed out the demands of the trade and furnished the pumps where it was necessary to maintain our trade, after the practice had been started by other companies.

Q. From your experience do you believe that the practice of leasing and loaning these pumps under those agreements and understandings about which numerous witnesses have testified is a sound business practice?

637

Mr. Speer: Objected to as immaterial, irrelevant and incompetent.

Examiner McCorkle: The objection is noted. Go ahead and answer.

A. To give you a direct answer on that is quite a proposition. It has its merits and it has its demerits. From my standpoint as an independent oil man of small means, I should say it was a bad practice. From the standpoint of the Standard Oil Company, seeking to find an outlet for their immense gallonage, I should say it was a mighty good practice; also from the standpoint of the Gulf Refining Company, with unlimited capital, it is the only thing to do, looking at it from their standpoint; but to get back to my own self, my own company, I say that it is a practice that eventually will give us serious difficulties.

638

CROSS-EXAMINATION by Mr. Speer:

Q. You say you lost some customers, but in all probability you acquired other customers? A. Well, if you desire me to tell you some of the things that I have done to maintain our output, I would be glad to do it.

639

Q. I do not care to go into the details. I do not think it is competent. I would be glad some time when we have time to talk it over. It would be very interesting, but I want just that one fact: While you did lose customers by this practice, you did, also, gain customers by it? A. No; I will not say that. What we did was done to forestall the possible loss of trade and by judicious location of the outfits that were put out, we thought not only to guard against the loss of gallonage but possibly to increase it.

Q. To get new customers, in other words? A. Yes, we have got to beat the game. If we don't, they will beat us.

Q. That is what competition means—that each fellow has to hustle or the other fellow will get his trade? A. Yes.

Q. And you have plenty of competition in your territory? A. Lots of it.

Q. And it is increasing instead of diminishing, is it not? A. Very much so.

Q. And has not this curb pump system, which
641 enables them to get their product in this cheap way, under their brand, to the public—has it not increased the competition? A. Has it increased the competition?

Q. Yes. A. No, it has not.

Q. Are there not more companies operating than there were before? A. No; there might be in our particular field.

Q. I am speaking of your field. A. But the companies, the class of companies operating and furnishing us with competition today are large companies which have been existing for a long time.

Q. Certainly. A. And they are simply branching
642 out, looking for the little plums we fellows have gathered up.

Q. Some years ago they did not compete so much? They occupied certain localities, and now they are coming in and competing in every locality? A. As a development of the oil business.

Q. So that, as a matter of fact, now, under this pump leasing system, there are more companies operating in your territory than there were before? A. Only one company, the Gulf and the Standard Oil and ours were there, and The Texas Company within the last two years. I beg your pardon, I will cor-

rect that. The Texas Company came to New Haven four years ago and built a large filling station two or three months after I built mine. I got there first, with the best corner. They tried to buy it, but I would not sell.

Q. Did they, by building that filling station, or service station, or whatever you call it, take away some of the trade that you would otherwise have been able to take care of? A. Well, they had a very extensive advertising system or practice and by means of this system of advertising they undoubtedly influenced some of the trade their way, but no more than we 644
could help. We believe in going after them.

Q. So that that method of doing business, by establishing service stations, will take away the business from you just as well as the loaning of pumps? A. I should hate to see all the money they have invested there go without bringing them some return.

Q. Well, you are all doing pretty well, are you not, in spite of all this competition? A. Well, if a man is of a complaining kind, and weak kneed, he had better stay out of the oil business.

Q. So far as competition is concerned, there never was a time when competition in the oil business was as keen as it is today. Isn't that a fact? A. I think 645
you had better leave that question unanswered. My history of the oil business dates back 25 years and I have seen some mighty active times.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. What is the fact about it, Mr. Goodrich—this practice of leasing and loaning these equipments, whether it does or does not tend to too frequent duplication of curb pumps, unnecessarily so, so far as the convenience of the public is concerned? A. That

646 *Walter H. Goodrich, Re-direct*

is a fact that is very apparent to any business man. For instance, the Gulf Refining Company's agent on my premises made the statement that they had put out as leased equipments, $60,000 worth of outfits. That is twice the authorized capital stock of my company. That has been done this year.

Mr. Nesbitt: I want to object to that answer. I do not really believe that is competent, at all.

Mr. Burdeau: That is a declaration against the interests of the parties to this proceeding.

647

Mr. Nesbitt: The witness states what the Gulf Refining Company's agent told him about the output of these installations.

The Witness: That is a part of my answer.

Mr. Burdeau: But the Gulf Refining Company is a respondent here, and anything said by an agent of that company is admissible against that company.

Mr. Schekter: Provided the agent had authority to make such statements.

Examiner McCorkle: The objection is noted and you can have the benefit of it later. Proceed.

648

Mr. Speer: I object to it, anyhow, as immaterial and irrelevant.

Examiner McCorkle: The objection is overruled. Proceed.

By Mr. Zechiel:

Q. Go ahead, Mr. Goodrich. A Answering your question directly, that is an illustration. It must be apparent to you that they do put them out promiscuously, very much so, and not in line with any other

policy than to absolutely control the trade, so far as they are able, regardless of reasonable investment.

Q. And it is not a question of whether the public needs more pumps or pump stations for distributing purposes or not? A. They are more common up there than newsboys.

Q. Answering my question specifically, one way or the other, just to clear up the record, is it or is it not? A. What was the question?

(The reporter repeated the question as follows):

650

"Q. And it is not a question of whether the public needs more pumps or pump stations for distributing purposes or not?" A. No.

RE-CROSS EXAMINATION by Mr. Speer:

Q. Nevertheless, in order to get the business, you have to put in these filling stations, nowadays? A. You ask me questions that call for detailed answers.

Q. Isn't that a fact, that that is why you do put them in—because it is necessary for you to do that in order to hold your business? A. The filling station, judiciously located—

651

Q. I mean these little pumping stations. A. You mean the curb outfits?

Q. Yes. A. And your question is what?

Q. I say that the reason you are putting them in and installing them, as you say you have done, is because it is necessary for you to do that in order to hold your business? A. That is true, but we do not locate one pump so that it will sap another one.

Q. Of course that is a matter of business judgment? A. That is the policy of your company, however.

Q. This appears to be true, that the public are patronizing these little pumping outfits? A. Oh, they put them in front of drug stores and grocery stores.

Q. And the public patronize them, do they not? A. Oh, when their regular filling stations are closed up, and they cannot get in, if they can find one of these fellows, they will ring the bell and get him out of bed and try to buy gasoline.

Q. I understood it was the other way yesterday. So far as establishing these large service stations like you establish and spend a great deal of money on,
653 it was absolutely unnecessary for The Texas Company to come in there and build another one? You could have taken care of the trade? A. Oh, I would like to have had the chance.

Q. So that there was a duplication of equipment that was really unnecessary? A. Oh, yes.

Q. Isn't that true of competition in any line of business—that it leads, sometimes, to a duplication of equipment that might be avoided? A. Yes, quite often.

Q. But, after all, competition is not a bad thing for the public, is it? A. Certain kinds of competition are good.

654 (Witness excused.)

J. H. PORTEOUS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address, please. A. J. H. Porteous, Middletown, Conn.

Q. With whom are you connected? A. The Valley Oil Company.

Q. What is your position with that company? A. I am proprietor, owner.

Q. Is it an incorporated company? A. No, sir.

Q. You are sole owner of the company? A. Yes, sir.

Q. How long have you owned that company? A. Seven years in October.

Q. Prior to that time did you have any experience in the oil business? A. Yes, I was with the old school, the Standard Oil Company.

Q. That is the New York corporation? A. Yes.

Q. How long had you been with the New York 656
corporation prior to that? A. I worked for the Standard about nine years.

Q. Your present business is that of a wholesale or jobbing business? A. Yes, gasoline, kerosene and lubricating oils.

Q. What is the territorial extent over which you do business? A. We operate over a very small territory—Middletown and vicinity, Middlesex County.

Q. In connection with your business do you also handle oil tanks and pumps? A. Yes, we handle them; we sell them if we get a chance.

Q. Do you lease or loan such equipments? A. We do. We do not lease them; we put them out and 657
sell our gasoline to them.

Q. That is, you have an understanding with the parties with whom you place such equipments, that they use your gasoline through such equipment? A. Yes.

Q. How long have you been engaged in that sort of practice? A. About two years.

Q. Are you also, at the present time, selling such equipments? A. We will, if we get a chance, sell one.

Q. As a matter of fact, do you sell any of them? A. We have sold one recently, yes.

Q. In the past two years, since you have been loaning them out, have you sold any such equipments? A. No, we did not sell any.

Q. Prior to that time had you been selling them? A. No; we never did sell any. We have recommended the people that wanted the tanks to the tank makers, and we have had the tank makers call on the customers and sell them the tanks.

Q. That was prior to the period of two years ago? A. Yes.

Q. What was the occasion of your change from
659 the prior practice to the present practice of loaning out such equipments? A. We had to change or else lose all our customers that we did have; that is, those that used to handle gasoline at that time, in small outside tanks, 150-gallon tanks, or probably 200-gallon tanks, on top of the ground. In order to hold the business, we have had to put in a tank or our competitors would put in a pumping station for them.

Q. By pumping station you mean what? A. That is a pump and tank.

Q. When you say "for them," you mean they would put them in at a nominal consideration? A. They
660 would put them in free of charge, or lease them at one dollar a year.

Q. Have you ever lost business for your concern because you refused to install such equipment for a nominal consideration? A. Yes and no. We have lost some.

Q. You say "yes and no." Let us have that more definite. A. We have sold men that used to own their own tanks, a small inside pump, and when we refused to put in the outside pump for them, the Standard put one in and we lost the business.

Q. Was that of frequent or rare occurrence? A. It was not very frequent.

661

Q. In your community do the retailers have more than one such equipment installed in their place of business? A. No, they do not.

Q. Do you know of any cases at all where they have more than one? A. Not in my territory.

Q. From your experience in the jobbing of your products, do you think that the practice of leasing and loaning these equipments for a nominal consideration, under these so-called tying conditions, is a sound business practice?

Mr. Speer: That is objected to as incompetent, irrelevant and immaterial. 662

Examiner McCorkle: The objection is noted. Proceed.

A. No, I do not think it is a sound business practice.

CROSS-EXAMINATION by Mr. Speer:

Q. These outside tanks that you say the dealers owned, to whom you were selling gasoline before this system came in, were large tanks which they had outside the garages, as I understand, and they connected with a pump inside? A. As a general rule they used to draw it in 5-gallon cans. 663

Q. Draw it out in a can and pour it into the automobile? A. Yes.

Q. These modern tanks and equipments have the tank buried underground? A. Yes.

Q. That keeps it cool and there is less evaporation? A. It keeps it more on a steady temperature, yes.

Q. And this old system of having the outside tank has been entirely discontinued, has it not? A. It has.

664 *Nathan Wilkes, Direct*

Q. Nobody uses that? A. Not to sell. Some of the owners do have them.

Q. So that this use of these outfits, consisting of a small tank and a pump, has become the recognized method of retailing gasoline to the automobiles? A. Yes.

Q. And everybody uses that method, when they have their own pump or if it is leased to them? A. They do, yes.

Mr. Speer: That is all.

565 (Witness excused.)

NATHAN WILKES was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and residence. A. Nathan Wilkes, Hartford, Conn.

Q. With what concern are you associated? A. The Singer Oil Company.

666 Q. What is your connection with that company? A. I am treasurer.

Q. How long have you been connected with that company? A. Since 1914.

Q. Prior to that time did you have any experience in the oil industry? A. Not myself. The other people in the corporation had.

Q. But not you personally? A. Not myself personally.

Q. What is the general business of your company? A. The marketing of petroleum products.

Q. What is the general territorial area over which you do business? A. Hartford and vicinity; practically Hartford County. That is about all.

Q. In connection with your business do you handle oil tanks and pumps? A. We have given out, lately, quite a few.

Q. You say lately? A. Within a couple of years.

Q. Prior to that time had you handled them in any respect at all? A. From 1916 we have had two or three filling stations that we employed men for our own use; that is, we have not given any equipments. We own the equipment ourselves.

Q. In the last two or three years you say you have? A. We have had to loan some for one dollar a year, several equipments. 668

Q. You say you had to loan them. Just what do you mean? A. I saw that we were losing business and if we did not put out a few of these equipments we would lose business; we had to do something to hold some of the business, so we have done it and given out these equipments to hold our business.

Q. Why were you losing the business? A. To give an illustration, we had some people that we had done business with and they came around and said that the Standard Oil Company offered them an equipment free of charge, or for one dollar a year, and they would give me the preference because they had done business with me, but at that time, an 669 equipment looked so big to us that we did not see our way clear to give it to them and we lost them. There were several of them we lost in that way.

Q. Did you lose an appreciable amount of your business because of those conditions? A. As far as I know, these people, if I had furnished them the equipment, I could have sold—I could have sold probably two or three hundred thousand gallons of oil, but we did not see our way clear that we could do it.

670 *Nathan Wilkes, Direct*

Q. Would you lease or loan such equipments now, if your competitors were not doing so? A. Not unless I am compelled to, certainly not.

Q. From your experience in this marketing of gasoline, do you think that this practice of leasing these equipments under these circumstances and conditions, is sound business practice?

Mr. Speer: Objected to as immaterial, irrelevant and incompetent.

Examiner McCorkle: The objection is noted. Proceed with the answer.

671

A. It seems to me if the owner of each equipment would own the equipment, naturally I would have a chance at it, no matter who sells it to him, but, at one time or another, I could probably get around him and get some of his trade; but by being tied up to another company, of course, I stand no chance to sell him any except these equipments that I put out myself.

Q. Referring to the question again, is your answer yes or no?

(The reporter repeated the question as follows):

672

"Q. From your experience in this marketing of gasoline, do you think that this practice of leasing these equipments under these circumstances and conditions is a sound business practice?" A. I would not exactly like to answer that question. That is, I feel if I was capable, or able, maybe I would go on with these, because in the end it would be profitable, probably, for myself; but not being able to put out as many pumps as that, of course, it is different.

Q. Speaking from the point of view of your own company, under present circumstances, what is your answer?

Mr. Speer: We object to that as incompetent and irrelevant.

Examiner McCorkle: The objection is noted.

A. I would not think it is a fair practice, because it curtails competition.

CROSS-EXAMINATION by Mr. Speer:

Q. You do not manufacture gasoline? You have no refinery? A. No.

674 Q. You are what is called, usually, a jobber? A. A jobber; yes, sir.

Q. Before this leasing practice began, or before you began leasing pumps, you say you had several filling stations which you owned yourself? A. Two or three, yes.

Q. With the same kind of equipment? A. Yes.

Q. And you employed someone to operate them for you? A. Sure.

Q. And to sell your gasoline through those? A. Yes.

Q. You controlled those filling stations absolutely and nobody else could sell any gasoline to those stations? A. Not likely. 675

Q. When other companies began to lease and loan equipments, and it was necessary for you to put in an equipment in order to hold the trade, why didn't you put in a station of your own, similar to the several that you had? A. Well, there are two reasons why I did not. When I put in the first filling station myself, there were very few filling stations then, that is, curb stations, and we thought it was a good business policy to make one of them; but since the practice has begun of giving out pumps and tanks, they began to be so numerous that it

practically did not pay any more, the investment, for the amount of business that we were getting.

Q. In other words, it is cheaper to purchase the equipment and install it and loan it in this way than it is to establish a station of your own as you had been in the habit of doing before? A. I do not know whether it is cheaper, but we have seen that, as I said, the pumps were so numerous and the scarcity of help was so marked within the last couple of years or so, that it was practically impossible to run them.

677 Q. So that instead of putting in these filling stations, owned by yourself, where you would control the purchase of gasoline, you consider it a better policy and a necessary policy, on that account, to loan the equipments? A. It was a necessary policy, not a better policy, but a necessary policy.

Q. It is a cheaper method, is it not? A. I do not know how cheap it is. To us it seemed pretty costly.

Q. It evidently was a cheaper or more easily done thing than to own the station yourself, or else you would have continued your older method. A. I have still these three filling stations.

678 Q. If the companies that are competing with you, instead of loaning the tanks as they are doing, had put in a filling station like you have, employing men to represent them and sell the gasoline, it would have had the same effect in taking your trade, would it not? A. I don't know.

Q. You could not sell your gasoline to that filling station, could you? A. Certainly not.

Q. Any more than you can to the one where they lease the pump? A. No, sir.

Mr. Speer: That is all.

679

By Mr. Nesbitt:

Q. Are there any other jobbers in the oil business around Hartford and in that neighborhood? A. Yes, there is The Texas Company and the Gulf.

Q. I am referring more to jobbers. A. No, sir; none.

Q. You are the sole jobber in Hartford? A. As far as I know.

Q. There are jobbers covering the territory next to you? A. There is, ten miles from Hartford, at Manchester, there is the Valvoline Oil Company.

680

Q. I am referring more to the jobbing. A. There are not any jobbers in Hartford.

Q. Does your territory extend to Middletown? A. We never worked there.

Q. But does your territory border on the territory covered by the Valley Oil Company? A. As I say, we never went to Middletown, so I don't know. It is only twenty miles, but we never went there for any business. We just take care of Hartford and a few little towns around Hartford, that is all. We have not gone as far as Middletown.

By Mr. Speer:

681

Q. You just started in this jobbing business in 1914? A. Yes.

Q. And this system of leasing and loaning pumps was in vogue in this country before that time, was it not? A. Not very much. I do not recollect of any tanks and pumps being out at that time.

Q. Not in your community? A. Not in our community. There may have been a few pumps inside the garages, but none outside, not on the curb or street.

Q. Is it not a fact that this jobbing business, such as you are engaged in is quite a recent development?

682 *George E. Buck, Direct*

A. Why, I don't know whether it is recently or not. All I know is that we are in it since 1914. I don't know how recent it is.

Mr. Speer: That is all.

(Witness excused.)

Examiner McCorkle: We will adjourn at this point until tomorrow morning at 10 o'clock.

683 (Whereupon, at 4:45 o'clock P. M., an adjournment was taken until tomorrow, November 22, 1919, at 10 o'clock.)

New York, N. Y., November 22, 1919,
10:00 o'clock A. M.

Met pursuant to adjournment.

Appearances as before.

Examiner McCorkle: Proceed, Mr. Zechiel.

Mr. Zechiel: I will call Mr. Buck.

684 GEORGE E. BUCK was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address, please. A. George E. Buck, Palmer and Worcester, Mass.

Q. With what concern are you associated? A. E. A. Buck & Company, Incorporated, and E. A. Buck and Company.

Q. Two different companies? A. Yes.

Q. What are your positions with respect to those companies? A. I am president and treasurer of

685

E. A. Buck & Company, and owner of E. A. Buck & Company, Incorporated, and owner of E. A. Buck & Company.

Q. How long have you been in the gasoline business? A. Thirty or forty years.

Q. You retail or wholesale gasoline and refined oil and lubricating products? A. Wholesale everything in the petroleum products line.

Q. What is the general territorial extent of your business? A. We have covered practically all of New England with our general lubricating business and Worcester, Milford, Webster, Palmer and Greenfield with our gasoline output. We have now sold to the Tidewater Oil Company all of our oil business except in Connecticut; I might say all that we have in Massachusetts.

686

Q. You still have a branch in Connecticut? A. I am interested with my brother at Willimantic, Connecticut, in the oil and grain business; more particularly grain.

Q. In connection with your business, when you were still operating as a jobber of gasoline, did you handle oil tanks and pumps? A. Yes, sir.

Q. Did you sell those equipments? A. We sold equipments; yes, sir.

687

Q. Did you also lease and loan such equipments? A. Yes, sir.

Q. Were you selling those equipments at the time that you sold out to the Tidewater people? A. When we could, always.

Q. And you were also, at that time, leasing and loaning equipments? A. Yes, sir.

Q. How long has your present company been engaged in business—I mean the company you have just sold out to the Tidewater Company? A. I could not tell you. The Tidewater must be a concern that has been in trade—

688 *George E. Buck, Direct*

Q. Not the Tidewater. I am speaking with respect to the business you sold to the Tidewater. A. That is very recently. They have gone into the jobbing, you might say into the wholesaling to the garage trade; they have lately gone into that, within two years. You mean the Tidewater?

Q. No, I am speaking with respect to your own interests; how long had you been operating your own interests that you sold to the Tidewater people? A. Oh, up to September 15 of this year.

Q. And prior to that time for how long? A. Be-
689 tween 30 and 40 years.

Q. And during that time you had been selling refined oil and gasoline constantly, had you? A. Practically; yes, sir.

Q. How long had you been selling pumps in connection with your business? A. Well, we have sold pumps probably for 20 years; not the filling pumps that we get nowadays, but we have always jobbed more or less of that line of stuff.

Q. And about the time the curb pump came along you started handling it? A. Well, we held off approximately two years before we began to loan.

Q. I am talking about the selling. A. We have
690 sold them ever since they were made.

Q. You say you held off for two years. About what date was it that you began leasing or loaning? A. Approximately six years ago, that we started in to loan equipment.

Q. What was the occasion of your starting to loan those equipments? A. Because we had to.

Q. That might be a conclusion. Will you just state the facts? A. The facts were that at Worcester —I will speak of that because of its being about where the game started with us in the loaning of equipment, we had quite a little circus with our big

691

friend, the S. O. Company. They were the only ones in there at that time and they started in to loan equipment. We held off for approximately two years. Probably we had two-thirds of the trade of the City of Worcester up to the time they began to loan equipment. I think it is safe to say that we had two-thirds, and I think we had more, but the loan equipment looked like a very big proposition and we did not want to get into it: we did not think there was any need of it, and we held off a year and a half or two years before we went into it and then we should not have gone in if we had not be- 692
gun to lose customers.

Q. How much business had you lost because of the practice of your competitor of that sort? A. Probably there was not, at that time, one filling station then where there are twenty now. We may have lost six or eight, but the loss of six or eight six years ago, in customers, made a bigger dent than it would to lose half a dozen new fellows coming along now.

Q. Would you say the loss of your business because of that practice of your competitor was a substantial loss? A. Well, yes and no. Of course, the business was growing.

Q. I am speaking, though, of just the individual 693
loss of business. I am not speaking of the comparative loss of business. A. Why, it was a loss, a considerable loss, of course.

Q. And your practice of leasing these equipments was for the purpose of meeting that competition? A. That is why we loaned them, yes.

Q. What is the amount of your capitalization? A. Seventy-five thousand dollars, of E. A. Buck & Company, Incorporated.

Q. And the other company, about how much have you invested in it? A. Well, it is rather hard to

694 *George E. Buck, Cross*

tell; perhaps a hundred thousand dollars or a hundred and twenty-five thousand dollars. That I could draw from if I had to.

Q. From your experience in the retail of refined oil and gasoline, do you think the practice which you have just described is a sound business practice?

Mr. Speer: We object as incompetent, irrelevant and immaterial.

Examiner McCorkle: The objection is noted. Proceed.

695 A. Why, yes, a good practice for the fellow who has got the money to do it with. He is dead sure to get the business if the other fellow cannot meet him.

Q. By "the other fellow" you refer to the companies with small capitalization and small means? A. Well, I think they have to fall out of the game.

CROSS-EXAMINATION by Mr. Speer:

Q. Does it not require less capital, Mr. Buck, to buy these little curb pumps and install them than it would to build a large service station into which the
696 automobile people would have to drive in order to get their gasoline? A. Yes, probably.

Q. So that, as a matter of fact, this method of getting your gasoline to the consumer is less expensive than if you established service stations in the cities? A. We have gone into the service station end but very little, so that I am not very conversant with it.

Q. You did not go into that, either? A. Not but very little; I think we have five filling stations.

Q. A great many large companies, who are marketing large amounts of gasoline and have a particular brand and are bringing their product to the con-

sumer, do build those large filling stations in the large centers of trade? A. Yes.

Q. And by advertising their product, endeavor to induce the automobile people to drive in and fill their machines in their stations? That is a fact? A. Yes, sir.

Q. And that costs more, really, in proportion to the amount sold, as a rule, than to buy and install these little curb pumps? A. I know some of the plants are very expensive.

Q. The loaning of these curb pumps has caused a great many more of them to be installed in Worcester and that vicinity than would have been done had the pumps and equipment not been loaned? A. Yes, quite likely. 598

Q. Now, at the time this loaning began you say you and the Standard Oil Company of New York were the only people that were competing in that territory? A. Yes.

Q. And you had two-thirds of the business? A. I think it is safe to say we had two-thirds.

Q. And they had the other third? A. Yes.

Q. How long had they been in business there? A. Well, I have only been in business 12 years in Worcester, then about four years. 699

Q. You were both in business? A. Yes.

Q. Did they have a service station where people drive in for gasoline? A. No.

Q. Have they any yet? A. No, sir.

Q. Since that time, since this loaning began, what other companies have come in and are competing there now? A. The Gulf Refining Company and The Texas Company. The Texas Company first, and then came the Gulf.

Q. And they are all using the same method of loaning the curb outfits to the operator? A. Yes, but they have not seemed to make any headway.

Q. They are making an effort, however? A. They are.

Q. How long have they been working there? A. I should say The Texas have been there six years and the Gulf perhaps four years.

Q. But they do make competition? A. Yes.

Q. And they are doing business there? A. Yes.

Q. They are getting some business? A. Yes.

Q. Now, the Tidewater has purchased your company? A. Yes.

Q. And they, I presume, are retaining a good share
701 of your business? A. I think they are, yes.

Q. The Tidewater are also loaning and leasing pumps, the same as the other companies? A. Yes, sir.

(Witness excused.)

WILLIAM J. O'SULLIVAN was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Burdeau:

702 Q. State your name and address? A. William J. O'Sullivan, Cambridge, Mass.

Q. What is your business? A. Petroleum jobbers.

Q. That is the American Oil Company of Cambridge, Mass.? A. Yes.

Q. Is that a corporation? A. Yes.

Q. What is your position with that company? A. Treasurer.

Q. Have you anything to do with the marketing of your product? A. Indirectly; not directly.

703

Q. Do you understand the conditions under which your company markets its product? A. As they have been reported to me.

Q. In what territory does your company do business? A. Metropolitan Boston.

Q. Not outside of the State of Massachusetts? A. No.

Q. Do you know what competitors your company has in that vicinity? A. The Standard Oil Company.

Q. Of New York? A. Of New York; the Gulf Refining Company, The Texas Company and the Tidewater; that is practically all.

704

Q. Does the American Oil Company loan or lease pumps for a nominal consideration to its retail customers? A. Yes.

Q. In how many cases has that practice been adopted? A. Oh, I should say 15 or 20.

Q. When did your company begin to do that? A. Between two and three years ago.

Q. Did your company ever lose a customer because of its refusal to lease or loan a pump for a nominal consideration? A. Yes.

Q. About how many customers did your company lose for that reason? A. A considerable number. I do not know just the number.

705

Q. Was that within the last two or three years or before your company made up its mind to go into that practice? A. When I answered your question, I had in mind prior to the time we entered the practice.

Q. Will you state how your company came to go into the matter of loaning or leasing these equipments? A. We were obliged to go into the loaning and leasing of pumps because whenever our customers happened to need a new pump to replace their old one which had worn out, or they wanted a

5-gallon pump to replace their 1-gallon pump, they simply told us if we would not do it, they could get it for a nominal sum from the Standard Oil Company, and we were, therefore, obliged to lease or loan these pumps.

Q. When you speak of customers who wanted to replace their pumps, do you mean by that these customers owned their own pumps at that time? A. Yes.

Q. And they had become unfit for use through wear and tear and so forth? A. Exactly.

707 Q. Can you give the approximate number of such instances? A. I should say it is between 15 and 20, the number of pumps we installed. Those were only our own customers who were likely to be attacked by our competitor.

Q. Do you consider from your experience in the oil business, that this practice of loaning or leasing pumps for a nominal consideration is a sound business method or policy?

Mr. Speer: We object to the question as immaterial, irrelevant and incompetent.

Examiner McCorkle: The objection is noted. Proceed.

708 A. Most certainly not.

By Mr. Burdeau:

Q. Will you please state your reasons for thinking it is not? A. It removes competition in petroleum products and places it on the pumps and tanks; and that, in turn, even in that competition, there is no equality of competition or opportunity, on account of the insidious methods of advertising by the Standard Oil Company.

Q. What do you mean by that? A. Putting a

premium on garages using their pumps and tanks and having their trade-mark.

Q. I would like you to be a little more specific than saying what happens. What do you mean by "putting a premium" on garages that use their trade-mark? A. They advertise the garages that use their gasoline and consequently use their trade-mark. They list them in the papers as reliable dealers, where the best gasoline can be obtained and as the best way to be sure that reliable gasoline can be obtained.

Q. You know nothing about the circumstances under which those advertisements are put in, do you? 710
A. I do not just understand your question.

Q. What I mean is, you speak of certain garages being listed? A. Yes.

Q. Do you know whether any charge is made for such a listing? A. Any charges?

Q. Whether any charge is made by the Standard Oil Company for listing a garage in such an advertisement? A. The fact that they use their gasoline and in some instances as a lever to have their equipment installed.

Q. Have you fully stated your reasons for believing that the practice is a bad business plan? A. Well, there is another phase of it that enters into it and 711
that is they use the equipment, once they have it in, as an intimidation whereby to hold their trade. For instance, a garage man might be persuaded to install the Standard Oil equipment practically free and later on have a change of heart and want to come over to an independent, and the Standard Oil Company, by reason of their lease, could either rip his tank and pump out, at considerable inconvenience to the garage man, or the cost price of the equipment might be due the moment they put another company's gasoline in their tanks, and their accounts

could be trusteed, I suppose, and cause the garage man considerable trouble.

Q. Do any of the companies besides the Standard Oil Company of New York make a practice of leasing or loaning these pumps and tanks in your territory? A. Yes, the Gulf Refining Company and also the Tidewater.

Mr. Burdeau: That is all.

CROSS-EXAMINATION by Mr. Speers:

713 Q. Do the Gulf and Tidewater people advertise their gasoline, too? A. Somewhat, yes. I should split that question, perhaps, and say that the Gulf does, somewhat, and the Tidewater does somewhat extensively, just now.

Q. Yes, and that is rather the business practice in every line, is it not—to advertise your product as being good to buy? A. Yes, but that is not the way that the advertising of the Standard is done.

Q. You say they advertise in the papers and otherwise that certain garages are selling their gasoline? A. Yes.

Q. And you say that is a bad practice? A. No.

714 Q. What is there bad about it, then? A. If you will just let me refer to this ad. in question—they say that the best way to be sure that the gasoline you buy measures up to quality standards is to buy from the dealers listed below. That is not necessarily true.

Q. Because those dealers sell their gasoline, is the idea? That is what the advertisement says, when you get through with it, is it not? A. It not only says that, but it says that the sign of a reliable dealer is the Standard Oil sign.

Q. That is, they hold out that they do not put their gasoline in garages unless he is a reliable man? A. If they do, they hold that out falsely.

Q. Why so? A. Because that is not altogether true. The sign is not necessarily, of itself, a sign of quality. It is not a sign that the man buying Standard Oil gasoline is reliable.

Q. What you are objecting to, now, is the way they are advertising their business? A. Not necessarily. Principally, their system of leasing and loaning pumps.

Q. You have made that the point, as the reason why you are objecting to this—that they not only lease their pumps, but they advertise? A. Yes.

Q. In a way that you think is improper, the garages 716
which handle their product? A. Yes.

Q. It is this advertising that you are complaining of particularly? A. No, it is not.

Q. Well, you are complaining of it as the main feature? A. No, I am not.

Q. They advertise in the papers here in New York, do they not—a whole page of garages? A I don't know.

Q. Where their gasoline can be purchased? A. I don't know anything about it.

Q. Don't you know that other companies do the same thing and advertise garages that handle their gasoline? A. No.

Q. You don't know anything about that? Don't 717
you know that the Tidewater are doing that? A. The last advertisement that I looked at of the Tidewater had no garages listed.

Mr. Speer: I have nothing more.

(Witness excused.)

718 *E. J. Little, Direct*

A. E. JONES was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address, please. A. A. E. Jones, 238 Wilson Avenue, Newark, New Jersey.

Q. With what concern are you affiliated? A. The American Oil & Supply Company.

Q. What is your position with that company? A. Vice president and general manager.

Q. How long have you been associated with it?
719 A. Fourteen years.

Q. Is that the total extent of your experience in the oil business? A. It is.

Q. What is the general business of your company? A. Marketing of lubricating oils only, from petroleum products; no gas or refined oils.

Q. You do not market any gasoline at all? A. No, sir. I have not been able to quite figure out why we are here.

Q. Well, I do not know, either. You have no experience, then, in the gasoline industry at all? A. None at all, sir.

Mr. Zechiel: That is all.
720 Mr. Speer: No questions.
(Witness excused.)

E. J. LITTLE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address, please. A. E. J. Little, 50 Church Street, New York City.

Q. With what concern are you employed? A. S. F. Bowser & Company, Fort Wayne, Indiana.

Q. What is your position with that company? A. District manager, New York district.

Q. How long have you been in that capacity? A. About two years in that capacity.

Q. How long have you been associated with that company? A. About 12 years.

Q. What has been your territory during that time? A. I have operated in Chicago and had charge of the Fort Wayne district, which covered about fifteen states, the central states and the south; had super- 722
vision of eastern territory at one time; at present in charge of the work in the Metropolitan district, Fairfield County, Conn., Westchester and Putnam County, Rockland County, New York, and northern New Jersey.

Q. How long have you been engaged, in one capacity or another, in this territory where you now are? A. In one capacity or another about three years, in the eastern territory.

Q. What is your company engaged in? A. Marketing tanks and pumps for handling oils and gasoline.

Q. In marketing those products, what is your general scheme or plan? A. We employ salesmen 723
to represent us in prescribed territory; some of the men working on salary, but mostly men on commission, operating at their own expense.

Q. How do these men conduct their business, in a general way? A. They go into the territory and solicit the sale of our product to the individual user.

Q. And the user, in that case you refer to— A. The public garage man or retail store man—any one who sells or handles or stores, for his own purpose, gasoline or oils.

724 *E. J. Little, Direct*

Q. In the conduct of your business for your company do you have occasion to travel about over this territory, or not? A. Yes; I make occasional trips into the territory with the men.

Q. Are you or are you not acquainted with the retailers generally of gasoline, the stations where your pumps have been established and other stations? A. I would not say that I am acquainted generally, but I know enough to have a good idea of the situation in the territory.

Q. Tell your experience, generally, either in the
725 territory at large or in various portions of the territory, as to whether or not garages and retailers have more than one equipment? A. Generally they have one. In exceptional cases they have more than one.

Q. Where there are more than one, do they retail different kinds of gasoline, furnished by different oil companies? A. No, that would be a very rare case. In fact I don't know of any such case. May I add something on that point, relating to the previous testimony?

Q. Whatever is pertinent to the issue. A. I noticed in some cases the information was given by some of our men that they thought there might be twenty
726 per cent of such cases where there were duplicate pumps, and that in those cases fifty per cent of that twenty handled two kinds of gasoline.

Q. Yes. A. I have motored and traveled in about, I should say, fifteen states, and I have never seen a case where a concern—it never came to my personal notice where a concern handled the gasoline of the two different concerns.

Q. But you do not know that that is not true in some cases? A. No, that is only my observation. I state that to show that I consider it is a rare case, not the rule.

Q. In connection with your business here in this territory, have you and your agents, under your direction, lost business, the business of prospective purchasers of oil tank equipments because of the practice of oil companies in leasing and loaning such equipments for a nominal consideration? A. Yes, sir; that has been a very serious matter with us. It has been quite discouraging to our salesmen, and it has made it very difficult in employing new salesmen, made it quite impossible, in some instances, to properly cover our territory to keep men on the territory to take care of the business. I would like to add further, 728
if I may?

Q. If it is pertinent. A. That it is not only the loss of the opportunity to make sales, but in this territory we have cases where the oil companies have—I may say an oil company, not oil companies—an oil company has cancelled the business which we have already written, and in some cases prevailed upon the customer to return our goods after the equipment has been sold and delivered and on the ground ready to be used.

Q. You speak of cancelled. Do you mean that, so far as you know now, from your own personal knowledge, whether the oil company actually secured a can- 729
cellation of the contract, or whether the cancellation was because of the general practice of the oil company to lease and loan such equipment for a nominal consideration? A. We judge that the oil companies were instrumental in it. I have a case within the last few weeks which resulted that where a man spent two or three months trying to get us to cancel an order after the goods were delivered; and we finally cancelled it, upon the understanding that he was not to use any other pump in the place of it; that he was not going to use that particular pump or a pump at that time.

730 *E. J. Little, Direct*

After we took the pump back with that understanding in writing, the Standard Oil Company Gilbert & Barker pump was placed there, and the man told us that the Standard Oil Company had the pump there the next morning—

Mr. Speer: We object to that testimony as hearsay.

Examiner McCorkle: The objection is overruled.

By Mr. Zechiel:

731 Q. You mean you went back to the customer the following morning after the installation, and made inquiry concerning the reason for his establishing that pump, although he had agreed not to do so? A. We did not go back the following morning. We did not think the man was going to put in a pump, of course, he had told us so many things about it. We did not believe that he would do it. The next time my salesman drove past, he saw the pump, and I asked him to go back and inquire how that came about; and then, day before yesterday, the customer said—

Mr. Speer: I object to that as hearsay. You
732 got this from your salesman?

The Witness: I have his report in writing.

Mr. Speer: I object to it.

Examiner McCorkle: The objection is sustained.

Mr. Zechiel: I do not think it is particularly material to this inquiry anyway.

The Witness: If you will permit me, I will read the report.

Mr. Speer: I object.

Mr. Zechiel No, I think I will not even care to inject it in this hearing, because it has a bearing that is quite outside of our issues.

By Mr. Zechiel:

Q. About what proportion of the installations in your territory are installations of G. & B. pumps? A. To answer that question, I would like to separate the metropolitan business from the rural business in greater New York, inside the city limits.

Q. In whatever way it makes it most intelligible. A. 734
In the city limits the proportion is not large, because of the restrictions in installations of curb pumps. In the rural districts, outside of the city limits, I should say there were eighty per cent of the Gilbert & Barker pumps.

Q. If you know, does any company other than the Standard Oil Company install G. & B. pumps? A. Not that I know of.

Q. Do you know about what per cent of those installations are under lease contracts? A. I do not know, only as—

Q. From your observation? A. From my observation I understand they are almost all under lease con- 735
tract.

Q. Do you know how the G. & B. equipment generally are marketed? Are you acquainted with the fact? A. Yes; they are marketed through the Standard Oil Companies.

Q. Is it or is it not a fact that the Gilbert & Barker people themselves have anybody on the road selling their equipment? A. We do not meet them in competition in sales, no.

Q. By that do I understand you to mean that you do not meet individual salesmen for that company? A. No.

Q. If there were salesmen in the community, it is likely that you would meet them? A. Yes. We do meet other people who are selling pumps, and we do not meet any one selling pumps from the Gilbert & Barker Company. I might qualify that by saying that I have met one gentleman who has an office here, so that my statement is incorrect in that respect, when I said I had not met any.

Q. Do you mean that he is or is not a salesman for the company? A. I do not know just what his position is. They have a representative in New York, but
737 we do not meet them in the trade as selling pumps.

Q. What you have testified to with respect to New York—is that equally true in all the territory over which you have jurisdiction? A. Yes.

Q. So that it would apply to the New Jersey territory as well? A. Yes. May I have the privilege of just stating something of our general position in this matter, or would that be permissible?

Q. Well, not unless it has something to do with the issues here. A. Well, it would have something to do with the issues as to the seriousness of the problem and its effect upon our business.

Q. If it has something to do with showing the effect
738 on your business, you should be entitled to answer, yes. A. I would like to say, first, that it is not the purpose of my company, as I understand our policy—

Mr. Speer: I object to that. We do not care anything about the purpose of his company.

Examiner McCorkle: The objection is noted. The witness may proceed.

The Witness: The introduction of the leasing of tanks, their not being sold to the trade,has, in a large measure, injured our public garage and filling station business. That is, it has been detrimental to the Bowser business.

739

It is true that we have kept up a volume of business, due largely to going into foreign trade and Government work, but it has been very detrimental to this particular class of business where the equipments have been leased.

We have no fight against the oil companies on this policy, really. We know that we will have to stay in business and do the best we can. We do think, however, that this cancellation of orders that I mentioned in one case is a very bad practice.

740 Q. That, I think, is wholly outside of the issue. I cannot see that we are here trying any cancellation of orders. In fact, so far as the Commission is concerned there is no evidence of that kind and I do not like to have the record impugn any bad motive to anybody. A. The practice is gradually going in a direction, we think, that is ruinous to our business.

Q. That is, because of the practice of leasing and loaning? A. Yes.

Q. And the effect it has upon your sales, or possible sales? A. Yes. We were forced, very reluctantly, to sell goods to other oil companies to meet this same situation, which was destructive to our sales organization, and it has been a very great loss to us. If that 741 is continued, in the direction that it is going by the Standard Oil Companies, it will mean that the other oil companies will be forced to manufacture, the same as the Standard Oil companies do their Gilbert & Barker pump, which will eventually eliminate us from the business which we have been operating for thirty-five years.

Q. That would not eliminate you so far as the jobbing is concerned, would it? Your company would still be in line to do jobbing work? A. I think it would practically eliminate us from business, because it would be so expensive for us, and so great a loss, to change

742 *E. J. Little, Direct*

over our plan. We have investments in office buildings and paraphernalia for operating the business as it is, so that it would really drive us out of the business, in my opinion.

Q. Just along that line: When you say it would drive you out of business do you mean to say that you think your company would be unable to manufacture pumps and distribute them in a jobbing way, in large volume in one order to oil companies; that it would make it impossible for your company to operate economically? A. I think so; because all of our plants
743 have been built on different lines, and we have heavy investments in office buildings and other paraphernalia provided for operating our business as we have been operating it, and I do not think we could compete in the jobbing business. I do not think we would have the opportunity, because I am quite sure that the large oil companies will be driven to making their own pumps. Some of them are already making pumps, ready for that. The Standard Oil Company policy will drive them to that to protect themselves.

The independent oil company is at a disadvantage now, because they have not the facilities for manufacturing pumps. They are paying a larger sum for
744 the pump which they give away than the Standard Oil Company is, because they have to go into the market and buy it. If the Standard Oil Company were buying in the open market, the situation would be different. There are oil companies who are already beginning to lay their plans for manufacturing pumps. The thing has been proposed dozens and probably hundreds of time.

CROSS-EXAMINATION by Mr. Speer:

Q. Mr. Little, as a matter of fact, the business of the Bowser Company, generally, over the country, has increased in the last few years, has it not? A. It is a question in my mind whether it has. We have had increases from export business and Government business, but not from the garage business?

Q. Well it has, in a general way, increased? A. I do not think that is a fair statement.

Q. What do you say about it? A. I say that the business in which the leasing of pumps enters has 746
been very much decreased.

Q. But it has increased in other lines? A. In export and Government work.

Q. And in sections where the companies who are putting in most of the outfits handle some other pump, of course your company does not make those sales, but you do make sales to the other companies that are handling your pumps? A. Yes.

Q. You make sales to the Texas Company? A. Yes.

Q. You make sales to them right in the territory where you have your sales agents, do you not? A. Yes. 747

Q. Now if, instead of leasing these pumps, these companies who are attempting to get their product to the ultimate consumer through these pumping outfits—if, instead of leasing them, they made the operator their agent and compensated him for his labor by a salary, or by a commission, and installed the pump, that would amount to the same thing, so far as your business is concerned, would it not? A. No, it would not.

Q. Why not? A. Because, in appointing an agent, the oil company would have to be responsible for the installation.

748 *E. J. Little, Cross*

Q. Certainly. A. It would have to be responsible for any damages that might come from that installation.

Q. That is as affecting the oil company; but I am speaking now, so far as your company is concerned. They would still put in the same pump they are now putting in, and you would not get the sale. A. I am trying to answer your question, only I wanted to answer it intelligently. The fact that you have to take that responsibility means that you would not make that agency with a little fellow that had no responsibility.
749 You would only make it with a wholly responsible person, where you had to take the responsibility.

Q. You think as a result there would not be so many of them installed? A. There would be probably as many installed but not on the lease basis. We would sell a great deal of the trade where you would not put in an agent.

Q. Why would we not put in an agent if there was enough business to justify putting in a pump, and make the operator our agent? A. You would if he was a responsible agent and there was sufficient business to justify it. That would make a great reduction in the outfits you put out.

750 Q. You think we would not put in so many? A. You would not put them in with the little fellow; and with the larger fellow we would have a fair chance to sell him against your agency arrangement. It would be fair competition.

Q. Is it not, then, the fact that you think the large company would not put in so many agents for the reason that they could not get reliable men, and that the business would not pay them? A. I do not quite understand.

(The reporter repeated the question as above recorded.)

A. I contend that it would leave a fair opening for competition to sell pumps.

Q. But if they turned these leasing stations which they have now into agencies, while it might cost them more to operate and be less satisfactory to them, yet it would not change the pump situation at all, would it? A. Yes, it would.

Q. If they actually changed them over to agencies? A. Yes; it would change it.

Q. If the company has a pump which it is leasing to John Jones, and it is compelled to cease and desist that leasing system, and it makes John Jones its agent, 752
that does not make any change so far as the pump is concerned, does it? A. Not if it was already in there, no.

Q. Does it not make it more sure that the same pump will be kept there in the future than under this leasing system, where a man, when he becomes dissatisfied, can throw the pump out? A. I would not say it would make it more sure, no.

Q. Well, it would make it just as sure, would it not? A. I would have to study that question. I don't know, off-hand, but that plan would give us a chance to sell pumps, where the other plan does not. We believe in competition. 753

Q. As these other companies, the Texas and the Tidewater and the other companies you mentioned, keep leasing and installing pumps, they, of course, are in the market to buy, are they not? A. Yes.

Q. And they buy from whoever manufactures pumps with whom they think it best to deal? A. Yes.

Q. So far as you are speaking of the Gilbert & Barker pump as being owned by the Standard Oil Company, that is merely rumor on your part? You are not acquainted with the ownership of the company in any way, are you? A. You say it is rumor? It is from their own employees.

Q. You do not know, as a matter of fact, anything about it, except what you hear? A. I believe in the investigation on the dissolution proceedings that it was officially stated that it was controlled by the Standard Oil Company.

Q. That was the old Standard Oil Company of New Jersey, was it not? A. I am not sure about that.

Q. So far as you know, the Standard Oil Company of New York, so far as you know positively, the Standard Oil Company of New York is in no way
755 interested in the Gilbert & Barker Company? A. The employees say that it is.

Q. What employees? A. I have talked with a number, and they state that it is so controlled.

Q. Do you mean garage men? A. No, employees of the Gilbert & Barker Company.

Q. Who? A. Do you want to know who?

Q. Yes. A. Mr. Worrell and Mr. C. T. Hatmaker.

Q. Who is Mr. Worrell? A. Sales manager.

Q. He has nothing to do with the operating of the company? A. I could not say. I have talked with Mr. King, and he seems to know all about the Gilbert & Barker Company and their policies. I always
756 assumed so from my discussions with him.

Q. Don't you know that he has told you that he buys the Gilbert & Barker pump at a price, and when he sells them, sells them at a profit? Has he not told you that? A. No. I do not remember such a conversation.

Mr. Speer: That is all.

(Witness excused).

Mr. Burdeau: I would like to call Mr. Benie, of the Cycle Tire & Repair Company, Mount Vernon, New York, and I want to call Mr. Ralph Foreman and Mr. Lou Hutchinson,

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Hempstead, Long Island, and have the default of those three witnesses noted.

Mr. Zechiel: I want also to call Mr. R. S. Matthews, Buffalo, New York, and Mr. L. D. Pierce, of Providence, Rhode Island, and have their defaults noted.

Examiner McCorkle: Let the default of the witnesses whose names have been called, and who have failed to appear, be noted.

Mr. Zechiel: I believe that is all. May we have the record show that we adjourn, at this time, to meet at Washington, in the offices of the Federal Trade Commission, at 2 o'clock 758
P. M., on November 24th?

Examiner McCorkle: All right. That is understood.

Whereupon, at 11:20 o'clock A. M., an adjournment was taken until November 24, 1919, at 2:00 o'clock P. M., to meet at the offices of the Federal Trade Commission in Washington, D. C.

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760 **Testimony Before the Federal Trade Commission, Washington, D. C., Nov. 24, 25, 26, 1919.**

UNITED STATES OF AMERICA.

Before the Federal Trade Commission.

FEDERAL TRADE COMMISSION vs. ATLANTIC REFINING COMPANY, *et al.*	Docket Nos. 131, *et al.*

761

Washington, D. C., Monday, November 24, 1919.

Met pursuant to adjournment, at 2 o'clock P. M.

Before: Examiner McCorkle.

Appearances:

Mr. Chester L. Zechiel and Mr. Joseph A. Burdeau, in behalf of the Federal Trade Commission.

Mr. Peter M. Speer, for the Standard Oil Company
762 of New York.

Mr. James L. Nesbitt, for the Texas Company.

Mr. Charles L. Guerin, for the Atlantic Refining Company.

Proceedings.

HARRY H. WILLOCK was called as a witness, and having been first duly sworn, testified as follows:

By Mr. Zechiel:

Q. What is your name? A. Harry H. Willock.
Q. And your address? A. 54th Street, Pittsburgh.

Q. With what company are you connected? A. With the Waverly Oil Works Company.

Q. How long have you been associated with that company? A. Thirty-two years.

Q. What is your company's business? A. Refiners of petroleum oils.

Q. Do you do any selling of your products to retailers? A. We do in the Pittsburgh district.

Q. How do you conduct your business generally in other districts? A. We sell through the jobbers.

Q. How long have you been engaged in selling to retailers of gasoline and your products? A. The com- 764
pany has for about thirty-nine years.

Q. And what has been your own experience in that connection? A. About thirty-two years.

Q. What have been your various connections with your company? A. I began as office boy; I am secretary and treasurer of the company now.

Q. During that time have you had occasion to become acquainted with the distribution end of your company's business? A. Yes; that has been my business.

Q. What are the general products which your concern puts on the market? A. A full line of petroleum products; that is, gasoline, naphthas, gas oils, fuel 765
oils.

Q. Do you also deal in lubricants? A. Illuminating oils, lubricants, paraffin wax.

Q. Do you sell lubricants to the retailers as well as your gasoline product? A. Yes, in the Pittsburgh district.

Q. In connection with the sale of your products have you ever dealt in any way in what is known generally as curb pumps, used in the distribution of those products? A. We have acted as a jobber of pumps. We have bought them from the manufacturers and sold them to our customers.

Q. How long have you done that sort of business? A. I don't believe we have done anything with pumps for more than six or eight years.

Q. What has been the general extent of your business along that line, say, in number of pumps sold per year or per month; just to get a general idea? A. That has always been something we never pushed at all. We simply handled them as a convenience to our customers, many of them not being particularly familiar with where to get such things, and we used them in that way, to give to these people.

767 Q. Have you any idea about the number that you have sold in that way? A. Oh, I don't presume it would amount to twenty-five a year.

Q. In the neighborhood of a couple of hundred pumps or three hundred pumps? A. Oh, that would be the very outside.

Q. To whom have you sold these pumps, in a general way? A. People who were dealing in gasoline.

Q. That is the retailer? A. Yes, the little garage man.

Q. And have you also placed such equipments with private concerns, private garages, and that sort? A. In a few instances we have sold some to private in-

768 dividuals.

Q. Now as to these retailers, do they include the grocery stores? A. No. Of course the grocery store don't use gasoline in our district to amount to anything—that is, do not deal in it.

Q. He is not a retailer? A. No, he deals only in kerosene.

Q. By whom in the main is the retail business conducted in your territory? A. You mean in what product?

Q. In the gasoline product? A. Oh, the garage and the service station.

Q. You do not have any general retail business conducted by grocery stores and that sort of thing? A. No, not in gasoline.

Q. You have sold your pumps to large and small garages, have you? A. Generally the smaller garages, because the larger garages were more familiar with the sources of supply and did not ask us for them, and we did not solicit them.

Q. In the sale of your pumps you have sold such equipment, whatever it may have been, at what you considered a fair margin of profit, or at cost? A. No, no; we are not in business for pleasure, and we 770 make a profit.

Q. Have you or have you not, in connection with your sales, ever entered into agreements or understandings of any kind, that your vendees, those parties buying pumps through you, should use your product to the exclusion of others or to the partial exclusion of others? A. No, we never considered it good business.

Q. Are you acquainted with the practice as engaged in by certain competitors of yours, oil companies, of leasing and loaning such equipments to customers? A. Oh, yes, we know it has been done.

Q. Who are the competitors in your territory? A. 771 Well, there are a number—A. D. Miller Sons Company, the Freedum Oil Works Company, the Beaver Refining Company, the Gulf Refining Company, the Atlantic Refining Company, the Pittsburgh Oil Refining Company. I think that about covers it.

Q. They are competitors in the jobbing end of your business, referring to jobbing or to the sale of your product to retailers? A. Yes. We have people who operate tank wagons in Pittsburgh.

Q. Going back a moment more to your pumps: When you sold these pumps to various parties what

was your general practice? Did you order individual pumps for individual customers? A. Yes; we never carried them in stock.

Q. Those pumps which you sold in that way, from where were they sent? A. They were shipped from the pump manufacturer.

Q. Who was that manufacturer? A. We have gotten them from several places. I have forgotten the names. The business was small. My brother usually attended to the detail of the pump business. I know he got some from Grostken & Company.

773 Q. Do you know where that concern is? A. I think they are in Milwaukee. Most of those pumps, you know, that we handled, were not really for city trade. They were people out in the country that the regular large pump manufacturers who had representatives in Pittsburgh were not as closely in touch with as they were with city people.

Q. Do you know whether or not most of the pumps thus ordered were sent in from outside of your state, to your customers? A. I don't believe any of them were bought in Pennsylvania.

Q. So that you ordered pumps for your customers and they were shipped to the customers from outside

774 of the state? A. Yes.

Q. In connection with your business have you ever lost customers because of the practice of leasing and loaning outfits to either customers of yours or prospective customers? Have you ever lost business of customers? A. Oh, yes.

Mr. Guerin: We object to that as immaterial.

Examiner McCorkle: Note the objection. The witness may proceed.

By Mr. Zechiel:

Q. You may describe that more in detail, if you will, Mr. Willock. A. Oh, well, we would be selling a garage and they reached the point where they wanted more facilities for handling their material, and, of course, in a competitive business one's customers are always being solicited by one's competitors, and we would frequently have the inquiry made of us—they needed another pump or they needed a pump, and would we loan it to them or supply it to them, and we would say no, we would sell it to them. "Well, 776
so and so and so and so will give it to us if we buy their gasoline, and if we take their pump you lose our business." Well, we always used the argument that the buyer always paid in some way for all he got, and we did not pursue that policy, we did not think it good policy for the garage man, and we did not think it good policy for the seller of the gasoline. If we could not come to an agreement we would lose our customer.

Q. And you did frequently lose such a customer? A. Oh, yes.

Q. Do you know to whom you lost such customers, to what companies? A. I have not got in my mind at 777
the present time specific cases, because for the last year or two I was away from my office, for a year and a half in war work, and have only been back now for six months, and I have not been as closely in touch as I was previously, and these names don't stick in my mind for such a length of time. We did lose one customer that happened just to come under my observation a few months ago, about two months ago, I guess, to the Atlantic Refining Company, a very nice account.

Q. If in a general way you know whether you lost customers, and to what companies you lost such cus-

tomers, without referring to specific instances, you may state it. A. Well, we have lost to the Atlantic, we have lost to the Gulf, we have lost some of them to the Pittsburgh. Now whether any of the others or not I don't have it specifically in mind.

Q. Does the Texas Company do business in your territory? A. No, sir.

Q. Are you engaged in what is commonly called the service station business? A. No, we don't operate any of those. We distribute everything from tank wagons, either to the dealer or to the consumer.

779 Q. You don't enter into agency contracts with retailers of gasoline, through which contracts they operate as your agents, using equipment furnished by you? A. We don't furnish any equipment under any conditions. Those things are all in the nature of prize packages, and I don't care to do business on a prize package basis.

Q. You are also engaged in the sale of lubricants? A. Yes, sir.

Q. To these same parties? Do you know whether or not you ever lost lubricant customers because prior customers of yours, in a general way, have installed pumps of competitors under these lease agreements,

780 and afterwards dealt in their products, even to the extent of lubricant products? A. No, not to such an extent. There has been a rather recent new idea in Pittsburgh in that line; I have forgotten now just who is doing it—the Transcontinental or the Pittsburgh, I don't remember which, but I think one or the other, they gave a portable pump or tank with a certain number of barrels of oil; but as far as I know they had no contract that their oil was to be used in it after those certain number of barrels that they sold with it were exhausted.

Q. I think perhaps you did not get my question, then; it was not very clear. I am referring rather to this: Without offering to lease or loan lubricating pumps at all, but merely because, say, the Atlantic Refining Company had installed a leased pump for gasoline, would a customer, who had been your customer, and to whom you sold both gasoline and lubricants, because of this lease agreement with respect to the gasoline pump, whether or not you lost the lubricant business to that company? A. Oh, I can't say that we have, although the natural tendency with such buyers is to rather confine their business to one 782
party. It is more convenient for them to handle.

Q. From your experience in the gasoline business, do you believe that the practice of leasing and loaning oil tanks and pumps for a nominal consideration, under agreements or understandings that the user thereof will not use in connection with such equipments the oil products of any other concern than that furnishing the pump, is a sound business practice?

Mr. Speer: The question is objected to as incompetent, immaterial and irrelevant.

Examiner McCorkle: Note the objection. The witness may proceed.

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A. I think it is a demoralizing practice. It has a great tendency to increase the number of dealers far beyond the requirements of the situation, by encouraging people without sufficient capital to start in the business.

By Mr. Zechiel:

Q. You are referring to retailers when you say "by encouraging"? A. Yes, encouraging them to start in the business, these litle dealers in gasoline and oil. It takes very little capital for anyone to engage in that

business at best, a comparative inexpensive building, and, frequently, a pump is the most expensive part of their outfit, and it leads to an ultimate greater expense of distribution on account of the multiplicity of agencies needlessly. It, of course, gives an advantage to the seller of gasolines of large capital, which the smaller distributor of gasolines would not have, to make that investment in a large way, because these pumps and tanks run into money quite rapidly.

Q. Do you believe that the whole tendency of that sort of a practice is to draw into the retail business
785 incompetent and unsubstantial retailers of gasoline? A. Undoubtedly so.

Mr. Speer: Objected to as incompetent, immaterial and irrelevant.

By Mr. Zechiel:

Q. Are you acquainted with a practice that is in vogue in some competitive areas of establishing agencies and furnishing the equipment to such agencies, who are to sell the gasoline products of the principal? A. Not particularly. Such a proposition I believe was operated for a very short time by the Atlantic, a few years ago, but I don't think they ever
786 pushed it to amount to anything.

Q. Have you ever given that consideration in connection with your own business? A. No, not at all. We were not interested in marketing in that manner. Everything we ship out from the plant goes to a buyer and we don't have any agencies.

Q. Do you believe, Mr. Willock, that if the practice of leasing and loaning these equipments were interfered with by the Commission, so that oil companies were restrained from entering into further agreements of that sort, where garage people and other retailers were not given or leased these equipments under these

conditions to which we have referred, and contracts now in force were to become inoperative, that the effect would be to cause the oil companies to enter equally as freely into agency contracts with various retailers? A. Oh, no.

Mr. Speer: We object to the question as immaterial, incompetent and irrelevant.

By Mr. Zechiel:

Q. Your answer was what? A. No, I don't think so.

788 Q. What is the reason for your answer? A. Well, an agency contract involves considerably more detail, the care of it, than the pump contract calls for. There is no detail in connection with handling the pump contract, after it is once installed; but the agency contract involves more or less of a checking up of gallonage. That was, I believe, the reason that the Atlantic Refining Company some years ago abandoned it. As the stories went around in the trade there—that is all I know about it—they had a lot of trouble in checking up gallonage, and there would be shortages that could not be explained, and it was very troublesome.

789 Mr. Guerin: If I may, I would like to object to the witness testifying to rumors going around the trade.

Examiner McCorkle: Yes, the witness cannot testify to rumors.

Mr. Guerin: And I would ask that it be stricken from the record.

Examiner McCorkle: Argument off the record, Mr. Reporter.

(Argument off the record.)

790 *Harry H. Willock, Direct*

Mr. Guerin: I think we are entitled to have knowledge of all his sources of information, whatever they may be.

The Witness: Of course, our sources of information are simply our tank wagon drivers and tank wagon salesmen who circulate among these people all the time and bring into us the information on which we base, of course, to a certain extent, our business policy—about how things are working in the trade.

Mr. Zechiel: If I may say another word
791 along that line, what has been testified to by the witness is peculiarly in the knowledge of the respondents, the Atlantic Refining Company, and if they wish to deny that as a fact, it is so easy to handle it in that way, and not interfere with the Government testimony in that respect. I think the answer ought to stay.

Mr. Guerin: I think it ought to be established as a fact, and there is a legal way of establishing a fact. I object to this method of trying to establish this as a fact.

Examiner McCorkle: That can be threshed out before the Commission. It is down on
792 paper, but I think it is incompetent evidence. The witness has stated it, and the attorney for the Atlantic Refining Company has moved to strike it out. It can be threshed out later.

Mr. Zechiel: It will not be removed from the record.

Examiner McCorkle. It is there, but it is incompetent evidence, in my judgment.

Mr. Zechiel: Just so the testimony stays in the record.

Examiner McCorkle: It is there.

Mr. Zechiel: And so that it will not be necessary to call the witness back to establish it.

793

By Mr. Zechiel:

Q. If you had not finished your answer as to the reasons why you think that agency contracts will not be entered into as freely under the circumstances referred to in my question, continue, Mr. Willock.. A. Well, with my knowledge of the Atlantic Refining Company's and the Gulf Refining Company's business methods, which in the main are good business methods, I don't think that they would enter into an agency contract with some of the people of the standing of those that they have leased or loaned pumps to, many irresponsible people. Very more or less irresponsible people can get a pump, but I don't think the Atlantic Refining Company would want to dignify them by the name of agents.

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Q. That is referring specifically to your previous testimony to the effect that numerous retailers have been leased and loaned pumps, which brought into the general situation a lot of retailers that were not the best element to bring into that kind of business, you think that that kind of element would not likely get into the business under the agency plan? A. I think so.

Mr. Zechiel: That is all.

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CROSS-EXAMINATION by Mr. Guerin:

Q. Mr. Willock, you mentioned that about two months ago your company lost a customer to the Atlantic Refining Company? A. Yes, sir.

Q. Can I have the name of the customer? A. The word "United," was the main part of the title, "United Auto Garage" or "United Garage & Supply Company." It was over on East Street, In Allegheny.

796 *Harry H. Willock, Cross*

Q. The United Company, was it? A. The United Garage & Supply Company, something of that kind, on East Street in Allegheny.

Q. Will you describe to us please, how your company lost this customer. A. The way we happened to lose out there, we make a custom with garage people handling our supplies, if the people permit us we repaint their building and paint their sign on it, and put our "Waverly Gas and Oil" sign on it. These people had been using our gasoline for quite a long time. We put a sign of that kind on their building. It cost us
797 about $100 or $150. It is very good publicity to have a sign right where the gas is sold. That sign had been up about a month when there was quite a drive made, within the last two or three months, by the different companies in Pittsburgh to get tanks placed. It seems as if the whole force of the outfit were intent on getting as many tanks placed as they could, I presume probably in view of the Indiana decision, expecting something like that in our territory, and this happened to be one of the places that they drove on, to get the tanks in.

We had the opportunity to put the tanks in and retain the trade, but we turned it down, and the Atlantic
798 put them in and took the trade.

Q. How do you attribute the loss of the customer to the Atlantic? A. Well, because they got them.

Q. Do you know how they got the trade of this particular company? A. By putting the tank in.

Q. To whom was the offer made to put the tank in, and under what circumstances? A. Oh, I don't know. That was the Atlantic's business.

Q. Oh, you just draw the conclusion that the Atlantic Refining Company is responsible for the loss of that customer simply because the company ceased dealing with you and dealt thereafter with the Atlantic Refining Company? A. Oh, no, they told us.

Q. Who told you? A. The United people. I talked to them myself over the telephone. They happened to get me one day when the man who usually attends to that business was not there, and they told me that they had had our gasoline for a number of years and liked our goods very much, but if they could get a $300 to $500 outfit for nothing they were going to get it.

Q. Who was it told you, Mr. Willock, do you recall? A. No, I don't. I think it was a man by the name of Schmidt; but I am not positive on that point.

Q. You say you object to the system of leasing 800
gasoline pump outfits because it creates too many retail dealers who have no capital. Is it your idea that a man should not engage in the business because he has not a large capital? A. No, not at all. I am a great friend of the poor man, but with all of our feeling along that line we know, as common business practice, that a man must have a certain amount of capital to engage in any business, and that it is not well for the small man to place himself wholly under the control of the big man in order to go into that business.

Q. Do you think that objection is one with which your company for example should concern itself? A. Most assuredly. 801

Q. In the protection of the smaller dealers? A. No, not particularly that, but as a general business proposition it is not good business policy to pursue any practice which unnecessarily increases agencies. The greatest waste that America has today, and all our talk of the high cost of living, is the growing costs of distribution, and they certainly should be curtailed in every way possible.

Q. Do you think it increases the cost of distribution? A. Absolutely.

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Q. How do you think it increases the cost of distribution? A. If a community consumes a certain quantity of gasoline, or any other commodity, and if the points of distribution are increased beyond the number sufficient to conveniently supply that community, the community must pay an excessive cost in distribution, or those people do not live.

Q. Can you say as a matter of fact that the number of retail distributors now in existence has reached the point where it is in excess of the normal requirements in the particular section wherein the Atlantic Refining
803 Company is operating? A. I feel that there are far more distributing agencies than there is any economical need of, particularly in view of the fact that the large companies are continually establishing their own service stations. I feel that it might be good business policy, or a temporary policy, to distribute pumps and tanks very widely in order that no individual have sufficient gallonage to make it pay him much to handle it, which would cause the trade to be more and more centralized and in the hands of the large companies at their service stations.

Mr. Guerin: That is all.

804 By Mr. Speer:

Q. I don't know whether I understand your last proposition correctly. Is it your theory that it would be better for the business of the country if these small filling stations were discontinued and business was centralized into large service or filling stations owned by the companies? A. No. I feel that there is a certain place at which the distribution of any commodity from retail agencies must become more extensive. The agencies must be sufficient in number to be a convenience to the consuming trade. But after that point has been reached expansion beyond that merely means

multiplying agencies to the ultimate cost of the consumer.

Q. It is a fact then that this leasing of pumps has caused a great many of these filling stations, curb filling stations as we call them, to be established, that in all probability would not have been established if that system had not been adopted. A. Oh, I feel very certain of that.

Q. There is no question of that? A. Yes.

Q. As a matter of fact it is the cheapest way by which a marketer, a large marketer, who wishes to sell his product to the ultimate consumer, to the automobile man, it is the cheapest way by which he can reach him, is it not? A. You mean through this multiplicity of small stations? 806

Q. Yes, through the small station like this. It is the cheapest way by which you can get at the public, is it not? A. You mean to give him the tank? I don't think so. He gives him a pump that is worth from $300 to $500, and the amount of gasoline that a number of these little stations put out is very material. In fact they would not put those tanks in at all if they had to pay for them. They only put them in because they can get them for nothing, and because maybe by having gasoline there, a little bit, it might bring a fellow to them and they might talk him into buying a tire. 807

Q. That is the way I understand it. If the operator of these little curb stations, which have become so numerous throughout the country, was compelled to buy the pumping outfit, in all probability he would not establish his station at all, would he? A. No, in many cases that is true.

Q. And the marketer by furnishing him an outfit establishes a filling station there for the public to obtain gasoline, which otherwise would not be estab-

lished, in many cases. A. Yes, but not to the convenience of the public.

Q. Well, that is another question. A. Or not to the profit—

Q. But it establishes the station there anyhow, does it not? A. It certainly does. You can see it with your eyes.

Q. What does it cost to put in one of those little filling stations? A. I am not familiar with the cost, but it would be according to the size of the tank in the ground and the size of the pump; oh, somewhere about
809 $300 to $500.

Q. If a marketer was going to establish a service station where the automobiles would come and be supplied, and had obtained a property for that purpose, what would it cost, as a rule, the ordinary service station of that character which you know about in the country? A. You mean including property costs?

Q. Oh, well, of course, it would depend whether that was in the city or in the country, whether it was a sheet-iron shed, or whether it was like the wonderful buildings that the Atlantic are putting up in Pennsylvania—it would cost from $100 to $1,000.

Q. And for that cost a great many of these little
810 little curb stations could be established? A. There could be undoubtedly a great many of them established.

Q. If a small dealer with a small capital comes into a community and attempts to build up a trade in his product, his gasoline, is it not cheaper for him to establish a few of these curb filling stations, by leasing pumps, and thus get at the public with his product, than to have to purchase and erect an expensive service station? A. Oh, there is a better way than that, far better. I don't know what your service stations

cost per gallon, but I just have a sneaking idea. The reason we never established any, we deliver all our gasoline by tank wagons to the user, and we can do that for a cent and a quarter a gallon, and I am very sure that it takes quite a material, a very material, station to bring the cost of distribution to two cents a gallon.

Q. Now, your refinery is located in that community? A. Yes.

Q. Do you sell all your gasoline product through tank wagons? A. Except what we ship to the country in barrels. 812

Q. Then this is really the only part of the country where you are distributing through tank wagons? A. Oh, yes, sir.

Q. How much of your product do you distribute in that way? A. All the gasoline that we make, and then we buy considerably. I presume we distribute, oh, a million and a quarter gallons.

Q. The rest of your product you ship to dealers in other parts of the country. A. Well, the rest of our product, meaning in gasoline.

Q. But you do distribute all the gasoline you make right in this community? A. Yes.

Q. From tank wagons. A. And the country barrel trade. 813

Q. The country barrel trade? A. Yes.

Q. Do you ship much of it by barrels? A. Oh, yes.

Q. How is that used? Does that go to the automobile people as a rule, that gas in barrels, or what trade does that supply? A. Yes, to the automobile consumer or dealer, the garage man.

Q. That would probably be to a very small garage, private garage, that would buy a barrel? A. Well, yes, one barrel, and then a larger would buy a carload.

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Q. What does he do with it when he gets his carload? A. Of course some of them market out of the barrels, but the most of them put it in their tank, in a tank, and market it from the tank.

Q. What do they do with the barrels, if they use barrels, when they get through with it? A. Return them.

Q. To you? A. Yes.

Q. Do they buy their barrels from you? A. Yes, they are billed to them.

Q. And they get credit when they are returned? A.
815 Yes.

Q. They always have an account with you large enough to cover the amount of the barrels? A. I did not quite catch that.

Q. You bill them for how long a time, thirty, sixty or ninety days? A. Thirty days. The barrels are billed the same time as the gasoline, and if at the end of thirty days they send us a check for the amount of the gasoline on the bill, and a bill of lading for the barrels, their bill is cancelled.

Q. And whenever the barrel comes back, whether in thirty or sixty days of course you give them credit for it? A. Of course, but they have to pay for it, if
816 they want to keep it any length of time.

Q. If they don't want to keep it it is returned? A. Yes.

Q. You sell them a considerable quantity and they always owe you enough to cover the price of the barrel? A. Oh, no.

Q. There is an open account? A. Yes, but those accounts are very frequently cleaned up, absolutely clean. They may have fifty barrels and they will send the fifty barrels in, and we will send them a check for $400.

Q. It amounts in the end, so far as the money outlay to them is concerned, just the same as if you had loaned them the barrels? A. Oh, I want to make clear to you that we don't carry the investment in the barrel.

Q. It is carried in their account? A. We are not out the money on the barrel until they please to send it back, by any manner of means. Let me explain to you. The Atlantic Refining Company don't want their customers to keep their barrels. They insist that they send them back.

Q. Yes. A. They charge them a big price for 818
them, too, but rather put the pressure on them to send them back. And no matter whether the customer wants to keep them, they won't let them. Now our psychology of the barrel game is entirely different. We have no marks of identification on our barrels whatever, no name embossed in the barrel, no number embossed in the barrel. We simply have a paper label sheet on, and after that barrel has been out in a couple of rains, the label is gone, and nobody knows who owns the barrel whatever. And we rather want to put the pressure on them to let that empty get into the ordinary channels of commerce, just as if it were a pickle barrel or vinegar barrel, or any other kind of 819
barrel. We do not want them to be digging up one of our barrels fifty years hence and because our name is embossed on it, send it back and want a big price for it. We charge our barrels at cost, and as we can buy a new barrel—and of course we prefer to spend the money for a new barrel than for a second-hand one—

Q. Then as I understand, you don't get any profit on the sale of that barrel? A. Oh, no; we are selling gasoline.

Q. You actually bill it at cost? A. We actually bill it at cost, yes, sir.

Q. And then if it comes back to you you give them credit at cost? A. Yes.

Q. If a man bought a barrel of gasoline from you what would the gasoline be worth at the present prices, we will say? A. The gasoline would be worth, oh, say, $15.

Q. What would the barrel be worth? A. $8.

Q. That would make a bill of $23, then? A. Yes, sir.

Q. And you would bill it to him— A. At $23, yes.

821 Q. At the end of thirty days if he had the barrel back he would get credit for that amount? A. Yes.

Q. And then he would only pay the $15? A. Yes.

Q. That would amount in figures just as though you had loaned it to him, as far as that particular transaction was concerned? A. Yes.

Q. Did I understand you to say that this loaning of pumping outfits induced men of small capital to go into the business that otherwise would not go in? A. Yes, sir.

Q. And you think that is a mistake, to stir up competition in that way? A. No; you put it a little wrong.

822 Q. I will leave out the word "competition." You think it is bad business to get men interested with small capital? A. No, not small capital, because no business only requires small capital, but who have insufficient capital for the business into which they go. Now, a man can go into the gasoline business at the outside with a capital of a very few hundred dollars. But what I complain about is that he goes into the gasoline business with a capital of nothing but supreme nerve.

Q. Yes, and you object to so many people going in the business, don't you, who have not sufficient capital? A. Of that character, yes, sir.

Q. You think then it is better if the business of the merchandising or marketing of gasoline should be confined to large companies with large capital; is that what you mean? A. Positively not.

Q. You think there is a sort of golden mean which ought to be followed, and that men of small capital ought to be kept out of the business? Is that your theory? A. No, sir; insufficient capital. There is a great distinction there.

Q. You think there ought to be some method by which those people could be restrained from entering in the business? A. Not in free America. 824

Q. No. A. But not encouraged by unfair business methods.

Q. Your barrels that you furnish have nothing to indicate it is your gasoline that is being sold from them, except a sign that is washed off easily? A. Yes, sir. We have a paper label there that is on the barrel, and that will stay on that barrel in the ordinary transportation to a customer.

Q. But he can easily wash it off? A. Oh, it is put on with resin oil. It is not easily washed off, but it is washed off if the barrel is thrown out of the building empty and stands, as you see empty barrels standing, over the country, in the weather. If it lies out in the 825 yard for two or three weeks, yes, the label will likely disappear. It is a paper label.

Q. And when the label would disappear there would not be anything then to show the customer whose gasoline he was buying, would there? A. The customer is not interested in an empty barrel.

Q. But I am speaking of a barrel that was not empty, and after the label was washed off? A. The label won't be washed off as long as the barrel is full, because they don't allow full barrels to lie out in the weather.

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Q. But that label could be removed easily, could it not? A. Oh, yes. If anybody set to work to scrape it off. Sure, it can be scraped off.

Q. And when it is scraped off, no matter how it has been, there is nothing on the barrel to indicate whose gasoline is being sold? A. No; that is true of any label in the world.

Q. You like to have something on the barrels out of which the gasoline is being sold, to show it is your gasoline? A. Yes; that is the reason for putting a paper label on it, in the first place.

827 Q. You sell a grade of gasoline that you consider especially good for the automobile trade? A. I don't believe our trade would buy it unless it were especially good, because we ship so much out to the country in steel barrels, those people all being served in tank wagons from the Gulf and Atlantic at a lower price.

Q. You are confident that the fact it is your gasoline is a good factor in making sales? A. Sure thing.

Q. And that a marketer of gasoline like this who has an especially good brand desires in some way to have the public know that it is his gasoline that they

828 are purchasing? A. Sure.

Q. Outside of the immediate locality which you supply with tank wagons you have not undertaken to establish any distributing points where you supply gasoline to the trade by tank wagons or any other method? A. Well, we ship it in steel barrels outside of our tank wagon delivery.

Q. Those are what we have been talking about, that they may send back to you if they wish? A. Yes, sir.

Q. Before this system of having these pumping outfits was introduced—I do not mean the leasing spe-

cifically, but the use of these pumping outfits— A. Yes, sir.

Q. How was the gasoline delivered to the garages or to the consumers at that time? A. The pumping outfit came in practically—well, in fact there were pumping outfits—the Bowser tank I think is an older tank than the large consumption of gasoline. I think there were Bowser tanks before 1902. They had those tanks in stores for kerosene, oil, lubricating products, and such things as that. Of course the original garages started out pretty much like the original automobile, they were pretty bum affairs. They 830
would put a steel barrel on tap, as it were, with a faucet, I mean.

Q. How would they deliver the gasoline to the automobile? A. Draw it out in a bucket and carry it out and put it in.

Q. That was rather a wasteful way of delivering it? A. And a very dangerous way, too.

Q. With liability of an explosion? A. Yes.

Q. And it would evaporate while being run out. A. That was not of very great moment, but the danger of the practice was the greatest objection.

Q. And in those days they sometimes had quite large tanks that they filled with gasoline and drew 831
it out in the same way? A. Drew it out in the same way, yes.

Q. The universal use of gasoline has increased largely, or really developed since the universal use of the automobile, has it not? A. Oh, yes.

Q. And that has required that a supply be furnished at a great many more places throughout the country than otherwise? A. Unquestionably.

Q. So that a man going along can drive up and fill his automobile tank with gasoline? A. Yes, sir.

Q. Has not the use of these pumping outfits—I am not speaking of the leasing of them particularly, but their use, on account of the necessity of the automobile owner—become practically the only method by which gasoline is delivered to autmobiles? A. Yes, sir.

Q. Whether it is sold from garages, service stations or at the curb, they all use this same pumping outfit? A. They should all have to use it.

Q. Yes, they should be compelled by law? A. Yes, sir.

833 Q. So that they could not use the old method? A. Yes, sir.

Q. Have you more than one distributing point, or do you operate all your tank wagons from one distributing point? A. All from the works.

Q. Have you a pumping outfit there to supply automobile people who may chance to come along? A. No, we discourage that.

Q. You don't want to be bothered with it? A. We do not want automobiles to come into the plant. We have to have our own trucks in and out, and we do not want automobiles coming into our plant.

Q. So you do not have any pumps at all? A. No.

834 Q. You do not sell anything to the automobile man at all, do you? A. Oh, yes; we deliver to his house.

Q. To his house? A. Oh, yes, to his own storage.

Q. Do the automobile owners who have private garages, as a rule, have pumping outfits in them? A. A great number of them have. Some of them do not have, but I don't believe there is as many, by any means, in actual number, not comparing the great increase in the use of automobiles—I don't believe there is as many in actual number delivered in make-shift

storages, you may say, today, as there were ten years ago.

Q. Originally he would have a barrel or some cheap tank? A. Usually they would take one of these steel barrels—of course these steel barrels are all I. C. C. specification barrels, and they would put them up out in the yard and put a little cover over them and have a lock faucet on them.

Q. Was it ever the practice, or ever indulged in by any companies, the practice of loaning those steel barrels to private garages? A. I never knew that to occur. 836

Q. A man who could afford to have a garage would probably want to own his own barrel? A. Yes. Our custom was simply to ship out a barrel of gasoline—most of the people we did business with were not in the city, they were country people—we would ship them a barrel of gasoline and charge them with the barrel and charge them with the gasoline, and they would send us a check for the whole bill. Then after they owned it, they would return the barrels.

Q. The next time? A. Yes.

Q. So that as soon as the new barrel came the old one would be sent back to you? A. No. They always mounted the original barrel in rather a substantial 837 sort of way, and they would not want to tear that down. But they would usually pump it from the barrel that they got into the one they had mounted up.

Q. Later on the best private garages put in a little pumping outfit? A. Most of them.

Q. Is it not a fact that this leasing and loaning method, which has caused these pumping outfits to be established so plentifully, which are near to every automobile owner—has not that caused many of them not to bother keeping a pumping outfit in their garage, or go to that expense, relying on the pumping outfit in

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their locality to supply them with gasoline as they need it? A. Oh, I don't know. Yes and no, you can put that. The installation of a number of stations to make it convenient for the trade to get a supply, naturally would cause the man to prefer, if he did not like exercise, to get his gasoline from a station. But the multitude of these stations is no convenience to anybody. In fact these little stations are very inconvenient.

Q. I have not asked you about that? A. Yes, but I answered yes or no and I wanted to explain why
839 I said that. You know as to lots of these little stations, you drive up to them and you want some gasoline. Well, the little girl comes out and says, "Papa ain't home."

Q. Yes? A. "But if you pump it yourself maybe you can get some." They are not convenient, they are not economical. You go to the proper station and the man serves you quickly and properly.

Q. You think it would be better than if instead of having these curb stations, they had regular filling stations? A. No, I don't say that at all.

Q. What do you mean by a proper station, then? A. I mean that the man with insufficient capital has
840 gone into this business and is working some place, letting his wife and children run it during the day, and it is not really a business at all.

Q. But they do sell some gasoline that way? A. They do sell a very little bit, not in proportion to the expense of the facility at hand.

Q. Don't you know that many of the companies are saying that they are engaging in this business because they are compelled to do it so as to hold their trade? A. I suppose men are compelled to do a number of things to hold their trade when their competitors are doing wrongful things.

Q. That is a fact, is it not? A. Of course as long as one strong firm in any trade persists in doing a wrongful thing it works a hardship on every one else in the trade. I always refuse, however, to bend to these things. If a thing is not right it is not right, and we won't put those things in under any condition.

Q. You deliver by tank wagons? A. Yes, sir.

Q. A tank wagon costs considerable money? A. Sure.

Q. How many tank wagons do you operate just in that section, from this one station? A. We have 842 about two trucks and six or so wagons that we operate regularly.

Q. What does a wagon cost, the ordinary tank wagon? A. We operate all of our tank wagons on a contract. We pay so much a gallon for our delivery, and I am not familiar with those costs.

Q. You don't own the tank wagon, then? A. No.

Q. Oh, I see. Somebody owns the tank wagon and you furnish him the gasoline? A. Yes. Mr. Weir, who is the president of the corporation, has run those. He started that many, many years ago, as a young man, as a side issue, and has operated them ever since. 843

Q. So you don't even own your own tank wagons? A. We actually own the old barrel wagons. I will have to explain at length to be truthful to you. We actually own the old barrel wagons but we do not own the new trucks, and we never owned any of the horses.

Q. Do you charge the men who operate them for the use of these old tank wagons? A. Under our contract with him we were to supply the wagons, furnish the wagons, and pay him a certain amount for delivery of the oil, he having all the expense of sell-

ing and of delivering and of the horses, and all that sort of thing.

Q. But the wagons themselves you own? A. We own them.

Q. And the only charge you make for them is what may be included in the percentage per gallon which he gets for selling your gasoline. A. He gets a certain amount per gallon, yes.

Q. I think we got away from the one proposition that I asked you about, whether the installation of these curb stations, or so many filling stations, has
845 not caused a great many private garage owners, especially the small man with a small garage, who is not able to buy any equipment, caused them to depend upon these filling stations and not put any pumping outfit in his little garage? A. Oh, no. We could cut down delivery stations in Pittsburgh, I should judge, thirty per cent, without disturbing the convenience of the public.

Q. I am not asking you what might be done in that line. Is it not a fact that many of these little private garages, especially out in the country, have no pumping outfit in them at all? A. Oh, many out in the country, yes.

846 Q. How do they supply their autos with gasoline? A. With gasoline?

Q. Yes. A. I suppose out of a barrel.

Q. You say that that ought to be prohibited by law? A. Absolutely. I have no sympathy with it.

Q. But they are not able to put in, a little man with a little Ford car and a little garage is not able to put in one of these pumping outfits, is he? A. If a man is not able to supply the proper facilities for his business he has no right to be in that business, when the convenience and the safety, particularly the

safety of the public, is taken into conisderation, and the insurance laws you will find require that very course.

Q. Yes, certainly. Now, if there are two or three filling stations in his nieghborhood he does not want to put in a pumping outfit, does he, because he can get it at those filling stations, if properly operated? A. You say two or three in his neighborhood. Why not one.

Q. Make it one? A. All right. I will agree with you on that. Then what is the neighborhood of an automobile. 848

Q. I mean within convenient distance, so he would not have to run a mile or two in the morning? A. You see the neighborhood for an automobile is an entirely different thing from the neighborhood for a milk supply.

Q. You concede, as I understand it, that a reasonable number of these filling stations is a convenience in any locality? A. And a reasonable number will be supplied by the trade under ordinary merchandising conditions.

Q. You think there are too many being established now? A. The tendency is all that way, to overdo the business. 849

Q. Is it not a fact there are more companies now marketing gasoline in your district than there were a number of years ago? A. Yes and no. Considering the gasoline marketed there is not as many. But there are a great many more companies than there were years ago.

Q. That is what I wanted to get at? A. Originally you see there was none; then there was the Atlantic, and one by one added on.

Q. So that all these different companies which you have mentioned as now being competitors in your

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district have come in there as competitors within recent years? A. Yes, speaking of twenty years as recent.

Q. Just one thing that I want to get at. Is it not pretty hard for a man of small means to get into this distributing business by tank wagons? That involves considerable capital, does it not? A. Well, in a community like Pittsburgh it unquestionably involves considerable capital, when you take into consideration the acquiring of property for his storage, his tanks and so forth, but it involves very much more
851 capital if he has to buy $200 to $500 tanks for everybody he sells to.

Mr. Speer: That is all.

By Mr. Nesbitt:

Q. Mr. Willock, the business of your compapny is a growing business, now, is it? A. Yes and no. We have refined 500 barrels of crude oil a day for many, many years. The only way our business grows is by purchasing some other products from other refineries to eke out an insufficient supply of our own.

Q. That is, you market all the gasoline that you
852 manufacture? A. Yes.

Q. And purchase some? A. And purchase some gasoline also, yes, sir.

Q. The management of your business has not in any way been affected by this practice of loaning and leasing pumps, has it? A. Oh, in one way it is to us more of an academic question, I am perfectly willing to admit, than a business question, because we market everything we make. The only way it limits us is this, that we do not need to purchase as much on the outside as otherwise. That in no way alters the facts in connection with that method of doing business.

Q. Will you state again just why your company did not engage in this practice of loaning and leasing pumps at a nominal rental? A. Simply because it was not good business. It is just a prize package business; it is the bait, it is the "come on," it is the bally hoo in front of the show. I rather would put all my cards on the table, face up, with nobody tied to me except by ties of business friendship, of service, of goods. That is the only basis for real business to be done on.

Q. Then is it not really true that you did not engage in this practice because you felt it to be an unprofitable policy for your company? A. An unprofitable policy in the long years; an immediately profitable policy, but not in the long years. You know we have been in the business when it was difficult to be in the business, and we have had considerable experience with business methods. We have been in it long enough to know that to a certain extent the small man in business is very much like the fellow with the small pile of white chips in a poker game—he has got to pursue mighty careful methods or he don't stay in the game. 854

Q. But your policy, even taking the long look was determined on the basis of profit and loss? A. Unquestionably, but at the same time that is simply on the bald basis that if you can hang on long enough, right will win. But you know it has been true in business, and that is what has made most men go wrong in business, that they feared they would not be able to hang on long enough until right won. 855

Q. But you are still hanging on? A. Oh, sure, we are hanging on; we have a good hold on the limb.

Q. Mr. Willock, what limit would you place on the capital with which a man should go into this gasoline business? A. He should have enough capital to pro-

vide the facilities usually and necessarily incident to the type of business he expects to operate. Nobody can put that in dollars and cents.

Q. Have you had frequent experience of stopping at these curb stations and waiting to be served? A. No, sir; I don't own an automobile.

Q. You buy at cost your barrels, don't you, that you deliver to your customers? A. We buy our barrels at cost?

Q. That is what I understood you to say.

857 Mr. Zechiel: Buy them back?

The Witness: Oh, buy them back.

By Mr. Nesbitt:

Q. I understood you to say you bought those barrels at cost? A. Oh, no.

Q. I did not understand.

Mr. Zechiel: Are you looking for a place to get a better price (laughter)?

Mr. Nesbitt: I was going to say, we have been buying our barrels from the American Steel Barrel Company, but—

858 The Witness: Not much. The barrel man attends to that. We have gotten our barrels from the American Steel Barrel Company ever since they began, but only because we found we could get the best barrel for the least money. They have made very handsome dividends on the barrel business, however.

By Mr. Nesbitt:

Q. You believe, do you, Mr. Willock, that there is too much competition in this business of delivering oil direct to the consumer? A. You mean the little tank station? Oh, yes. There are too many of those fellows in the business.

Q. But it is competition that they are engaged in, is it not? A. No, it is not really competition.

Q. What is it? A. Well, they get a price from the company who supplies them with gasoline, with a discount off, and the company that supplies them with gasoline usually has one or more service stations at which they have a price posted, and it would certainly be a swell curb marketer who could get more money on an honest statement of what his goods were than the big handsome service station would sell it to the people for.

Q. Do you have a trademark? A. We have several 860
brands copyrighted. We have a label, a designed paper label copyrighted, with the center of it blank. That is just a Waverly label and then on the center of it, you know, we put in, if it is gasoline or lubricating oil or whatever it is.

Q. You make an effort to identify that mark with your product? A. Not that particular label. We do not advertise that particular label. We simply put in "Waverly Gasoline."

Q. You identify the name with your product? A. Yes.

Mr. Nesbitt: That is all.

861

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Mr. Willock, do you in any way advertise through your customers the kind of product you handle? A. Oh, yes. We want everybody to know what stuff—

Q. How do you do that? A. We give them printed matter. Some times we will advertise in the papers, the newspapers, that our goods can be purchased from certain people. We make a business, as I mentioned before, of painting our signs on the garage. I find

that quite a bit more economical than bulletin signs along boulevards, and so forth, because I can paint up a garage very handsomely for from $75 to $150, and that will remain good for at least six months, and then the goods are right for sale where that sign is. While if I put up a 12 by 50 bulletin on the boulevard, in anything like a decent location, not anything extraordinary, just a plain location, it will cost me $150 a month. So I can get very much more publicity for very much less money by painting the garage, because the good garage is always located somewhere where
863 automobiles pass in sight.

Q. Do you attempt in any way to utilize the pump itself as a method of advertising, by glass globes, or something like that? A. We do not have any pumps. If we get the business from—for instance some of our customers or some dealers,have been buying from the Atlantic or the Gulf, and if they have a pump that they own (the Atlantic or the Gulf), of course they have a globe on top of it, with just their name, "Atlantic" or "Gulf," or whatever it is. I think that they supplied them with those globes. I am not positive of it.

Q. Do you know as a matter of fact whether or not the Atlantic and other competitors of yours do
864 have those globes on top of pumps that are not leased and loaned pumps? A. No, I don't know that as a matter of fact. I just see them on a lot of pumps. Of course I never thought of whether they were leased or loaned, or looked at them with that in view.

Speaking of the Atlantic, you know, I don't want to have the impression given that we are deprecating as a general proposition the Atlantic's distributing methods. I have done business with the Atlantic in Pittsburgh for thirty-two years, and their methods have on the whole been good methods.

Q. I don't remember just the answer you gave to Judge Speer's question, whether or not the lease and loan method of conducting this business was not in the long run the cheapest method for any company to distribute its product. A. Well, I think it is an expensive method.

Q. Where is the element of the expense, to your notion that is most prominent? A. There are a great many of these pumps, as I said, put into more or less irresponsible people; they go out of business, and they have to go and dig them up and take them back. The expense, you know, of putting in one of these 866
things, fixing up the pavement, and then going and taking it out and fixing up the pavement again, is as much as the whole outfit is worth.

Q. Then you think the question of expense, the cheapness, and so on, the economic value would depend upon the relative distribution of these pumps as compared with general public requirements and necessities, and that where there is a distribution larger than public requirements and necessities, to many inefficient and irresponsible people, to that extent the business is an expensive and uneconomical business; am I correct? A. Yes, and in another way. No man ever pays very much attention to the care he gives something that 867
belongs to any one else. If you ever have had any experience in renting houses you will have had that driven home to you. Everything that happens to this pump, and they don't care much what happens to it when it is given to them, the company has got to send out fellows to fix it up. Actually those people would not screw up a nut. I know that you practical men in the business here know that only too well; and it is a costly thing all the way through; that from the time that pump goes in until the time the pump comes out it is an inefficient factor of distribution, on a loan or lease basis.

868 Q. Referring again to these barrels which you furnish to your customers, is it or is it not a fact that although you charge these barrels out at cost and pay back money on the basis of cost, do you or do you not get interest on that investment during the time the barrel is actually out with your customer? A. That is a custom as old as the oil trade and as old as any trade in liquids. There was no way to handle those liquids but by the barrel, and that is the way the return package has always been, in every line. It is in the egg case, it is in everything else, any sort of busi-
869 ness. It has not been the custom to make an extra charge for the package, but the way we got into that might interest you, of making an extra charge for wood barrels as for steel barrels. When the tank wagons first came into use in the Pittsburgh district thirty years ago, and they began to be extended throughout the country, the people would buy from the tank wagons, for the reason that the tank wagon would say "Our price is eight cents." Our salesman would go out and say "Our price is ten cents." The buyer would not take into consideration that two or two and a half cents of our price was the expense of the barrel, but ten cents would just sound high to
870 him, and eight cents would sound cheap to him. After we had lost a good deal of trade on that human weakness, we concluded that we would capitalize that weakness ourselves, and so we would make a price of seven cents against the tank wagon price of eight cents. The tank wagon price of course was put in the man's tank. With seven cents the man would have to pay the freight on it, but seven sounded cheaper than eight. So naturally we got a lot of that trade back again, and that is the only reason we have kept it to this day.

Those are human, mental things that you have got to take into account and consider in all business.

871 Q. But it is a fact that with respect to your money which is actually invested in barrels that are actually out on distribution, that you are receiving interest on— A. No, we are not receiving anything on them. We sell them at a certain price. Of course our gasoline always costs the man out in the country more money than he can buy it from our competitors in the tank wagon. That is a foregone conclusion. He has to pay freight on it and haul it in his place, and handle it. And he would not buy that gasoline unless he thought at least he was getting more results.

872 Q. In point of fact is this gasoline barrel paid for on delivery? A. No, in thirty days.

Q. In thirty days? A. Yes. If the man discounts his bill he will discount his oil or his gasoline and send us a check for the barrel net; there is no discount on that.

Q. But whenever the money is paid, whether it is paid cash or in thirty days, it is paid on the barrel and contents? A. And the gasoline.

Q. That is what I was getting at. A. We will sue a man as quick for an overdue amount on the barrel as for an overdue amount on the gasoline.

873 Q. Do you or do you not think that the change from the use of the old-fashioned barrel to the present curb pump, or other pump method of distribution of gasoline, is attributable to the lease and loan practice? A. Oh, no. That grew up long after the pump was introduced. The pump was largely due to the driving selling ability of the pump manufacturers. They are some salesmen.

Q. In that same connection the change, to whatever extent there is a change, from the use by private individuals of their own storage barrels in garages, to the securing of their automobile or gasoline requirements from a nearby curb pump, is that due, in

your judgment, to the practice of leasing and loaning such curb pumps? A. Oh, not at all; not at all.

Q. The mere fact of the distribution from those pumps? A. That is all.

Q. Referring once again to your testimony on this question of over-supply of distributing centers on the part of oil companies, what do you think is the rule that ought to determine the number of gasoline distributing centers to be used by the public? I don't know whether I make that question clear. A. You make it clear, I understand, but there is a large
875 question involved there. I would answer that in this way: The free competition of unsubsidized agencies will provide the public with all proper and convenient facilities.

Q. When you refer to agencies, you do not refer to an agent and principal arrangement or contract; you mean distributing agencies? A. No, I mean pumps.

Mr. Zechiel: That is all.

RE-CROSS EXAMINATION by Mr. Speer:

876 Q. Do you sell any gasoline on 60 days? A. Well, we won't sue a man if he lets his account go to 60 days. We will give him a pretty stiff notice, and he would generally "cough up."

Q. Do you bill any for 60 days? A. Oh, no.

Q. All 30? A. Yes.

Q. But you will waste a little while on him. I suppose if he returned a barrel after the 30 days are up, within a reasonable time, you will accept it and give him credit? A. Oh, we always accept the barrel, but we drive him on the barrel just as we drive a man on his bill. You know you have 30 days with your customers.

give them a notice that your attorney is going to get

Q. Yes, certainly. A. And you drive them to that payment. And if they do not pay in 30 days, you drive them harder, and if it comes to 60 days, you it in 10 days. Now, you know you may not mean that, because if the attorneys got all the accounts that business men threatened to give to you, you would not be here in Washington.

Q. You don't want to anger a customer that you know is good, or sue him, because he don't return the barrel in 60 days? A. Or pay his gasoline bill, either. 878

Q. If he pays his gasoline bill in advance, you give him a discount? A. Oh, we give one per cent discount.

Q. But you don't give him a discount on the barrel? A. Oh, no.

Q. If he returns the barrel even if the 30 days is expired, you don't charge him any interest on the price of it? A. No, no more than we do on the gasoline if we left it run over.

Q. You don't charge interest on that, either, unless you have to sue? A. That is the idea. When we sue, we add in everything that we can add. 879

By Mr. Nesbitt:

Q. Have you ever brought suit for the recovery of these barrels by what the attorneys call an action in replevin? Did you ever seek to get back a barrel itself where the account was old? A. Replevin means going after something that is yours, don't it?

Q. Yes. A. No.

Q. You never did that? A. No.

Q. You never tried to get back the barrel? A. Not to my knowledge. But of course if some fellow broke up and he had a bunch of barrels we might have

tried to work some hokus-pokus to get those barrels back.

(Laughter.)

By Mr. Zechiel:

Q. Trying to get the barrel? A. Yes. We would pull off a bluff, if we could.

By Mr. Nesbitt:

Q. Which would you say was the modern and convenient method of distributing gasoline, directly
881 to the consumer, by drum or by tank and pump? A. The tank and pump; there is no question about it. If the consumer can get the kind of gasoline he wants out of the tank through the pump.

Q. That is all. A. If he cannot, he will buy it in another way and will be inconvenienced.

(Witness excused.)

CLARENCE SCHOCK was called as a witness, and being first duly sworn, testified as follows:

882 *Direct-examination by Mr. Zechiel:*

Q. Your name is what? A. Clarence Schock.

Q. Your address? A. Mount Joy, Pennsylvania.

Q. With what concern are you associated? A. I am a jobber in petroleum products, in my own name, or rather, I am the proprietor, trading under the name of the Independent Oil Company.

Q. What is your general line of business? A. Gasoline and kerosene in bulk and to some extent, lubricating oils.

Q. What is the general territorial extent of your business? A. Lancaster County, Dauphin County, and Cumberland County.

Q. How long have you been engaged in the oil industry? A. Since 1895.

Q. You are talking about your own personal business? A. Yes, sir.

Q. Did you have any experience prior to that time in this business? A. My father was in the oil business, to some extent, in the days of barrels.

Q. And you were associated with him? A. I was associated with him from 1886. 884

Q. To 1895? A. To 1895 and from that time on, individually. The Independent Oil Company is not incorporated, you understand.

Q. In connection with your oil business, gasoline business, do you also have pumps and tanks which are used in the distribution of those products? A. Yes, sir.

Q. How long have you been engaged in the pump end of the game? A. Since 1914, I think.

Q. Prior to that time you had not either sold or loaned or in any other way handled pumps? A. No, sir; very rarely if at all. 885

Q. In that respect are you now engaged in the leasing or loaning of those equipments? A. To some extent.

Q. How long have you been engaged in that practice? A. Our earliest attempts in that line were simply making dealers substantially our agents for distributing our products.

Q. I want to confine my question just as to the loaning. A. I think since 1915.

Q. Prior to that time how had you handled your pump equipments or business? A. Prior to the time

we loaned the pump the dealer who had it was practically our agent for the distribution of our goods, and we had a limited number of them.

Q. Did you, prior to that time, ever sell such equipments to customers? A. We have sold. I cannot answer how far back we first sold equipment, but we did it simply as a matter of convenience to our customers who were not familiar with the sources of supply of such things. We did not engage in it as a business at all.

887 Q. When you installed or furnished to one of your customers such an equipment, where do you secure those equipments? A. We have bought chiefly from the Bowser people; S. F. Bowser & Company, Fort Wayne, Indiana.

Q. Were those various equipments sent directly from the Bowser factory to your customer? A. Generally to our establishment at Mount Joy and we shipped from there.

Q. And you reshipped? A. Generally. That was not invariably the case.

Q. Sometimes you shipped them direct to the customer? A. Very rarely; they may have been a few instances of that kind.

888 Q. Those that you had shipped to your place at Mount Joy you would merely rebill to the customer, wherever he was? A. Yes, sir.

Q. That was all done in this same wrapping or crating in which it came into your place? A. Oh, yes.

Q. How did you come to begin the practice of leasing and loaning these equipments? A. The competition drove us to it.

Q. Will you explain more in detail what you mean by being driven to it? A. Well, our competitors, in

our field have been pursuing that policy to some extent, and we find it necessary to do it to a limited extent to retain our trade.

Q. That is, you mean to say, then, that you began the practice in order to meet a similar practice of your competitors? A. Yes, sir.

Q. Who are your competitors? A. We have in Lancaster County, the Atlantic Refining Company, the Crew-Levick, the Gulf Refining Company and myself. In Harrisburg, the Atlantic, the Great Western. There is one small jobber there, the Susquehanna, I think, and ourselves—Oh, the Indiana.

Q. The Texas Company does not engage in business in that territory? A. No, sir.

Q. What was the occasion of your beginning the practice of these so-called agency contracts? A. We found it hard to get trade against the competition of the established trade. It was a matter of getting a place where our goods could be distributed economically. For example, at that time it was the custom of our chief competitor in Harrisburg, the Atlantic, to reach out to the consuming trade. We had a hard job getting a few garages to come our way, and the expense of reaching out to the consuming trade with the tank wagon we considered pretty hard. We had some agency contracts by which the agent at that time, when the price of gasoline was from 11, 12 and 13 cents, sold on a commission of one cent per gallon, and we figured that was a cheaper distribution than hauling it around in tank wagons to the consumer.

Q. But you did not retain that as a system of distributing your goods? Why was that? A. Our customers all wanted the pumps from us. The prospective customers who were seeking pumps seemed

to prefer the form of contract of the Atlantic Refining Company, which provided for a purchase clause under certain conditions. Accordingly we had to change to their style of contract to meet the demand.

Q. Did you ever lose any customers, or prospective customers, because of this leasing and loaning of pumps, as practiced by any of your competitors? A. Oh, yes; we have had the business offered to us if we supplied the pumps, where we had our doubts about whether there was enough business to justify the investment required, and such business
893 we, of course, lost. In other cases we accepted the proposition where we thought there was a possibility of sufficient business.

Q. In some of those cases you mean that the business was turned over to the Atlantic Refining Company or some other competitor? A. Our chief competitors on the pump proposition, I guess our only competitors on it, are the Gulf and Atlantic in our territory.

Q. So that all the business lost to which you referred, was lost to the Gulf and to the Atlantic Refining Companies? A. Yes.

Q. Do you know whether or not, as a matter of
894 fact, your competitors did install pumps in those places to which you have testified? A. Yes. Such instances have happened frequently, but at this moment I cannot give you specific cases, because that particular part of the business I do not keep in detail in my mind.

Q. But you know it happened? A. Oh, I know it has happened.

Q. Have you ever lost any lubricant business because of this practice of leasing and loaning oil tanks and pumps? A. Yes, sir; we have.

Q. Explain that, if you please. A. Our competitors in the lubricating business have been pretty free in offering lubricating outfits. So far we have not yielded to that except in one instance where it was demanded, and on account of other considerations—the customer was a good gasoline customer and furnished his own outfit for gasoline—we did give him a lubricating outfit, loaned it to him.

Q. From your experience in the conduct of your business in the sale of gasoline and other petroleum products, do you consider this practice of leasing and loaning oil tanks and pumps for a nominal consideration, under agreements or understandings that the lessee of the equipment shall not use, in connection with the pump, the refined oil products or gasoline products of any other oil company than that furnishing the equipment, as a sound business practice? 896

Mr. Speer: The question is objected to as incompetent, immaterial and irrelevant.

Examiner McCorkle: Note the objection. The Witness may proceed.

The Witness: It seems to be a necessary evil. It is a very expensive way of conducting the business, but I have been unable to figure out any satisfactory remedy. I would be glad if it could be discontinued, because it adds very much to the expense, and the money expended on pumps must be considered practically as an expense item. I would, however, say that for the little fellow, as I am, there ought to be some way that he can provide something to compete with the service station of the big companies. Now, if we must loan to accomplish that then I would be reluctant to see the loaning stopped. If we can do it by agencies it is much more satisfactory to me. 897

898 *Clarence Schock, Direct*

Q. Would it be satisfactory to you if the garage people and other retailers would buy their own equipment? A, Oh, yes, sure.

Q. Do you believe that if the leasing and loaning of these equipments could be prevented by the Federal Trade Commission, or any agency, if the system could be prevented, or were to cease, that the system of agency agreements would result in as wide a distribution of these tanks and pumps, with respect to the agency agreement alone, as the present system of leasing and loaning? A. It would probably reduce the
899 number of them undoubtedly. It would probably limit the number of cases where they are put in without a sufficient prospective business to justify the expense of their installation.

Q. Do you think there would be a material deduction in the number of installations under agency contracts as compared with such installation under the lease and loan contracts? I am not referring now to outright sales; I am confining the comparison to agency agreements versus lease and loan agreements. A. Are you referring to my business or to everybody's business?

Q. I am referring to the business, as you under-
900 stand it, yes. A. It is a very hard question to answer.

Q. Suppose I confine it to your business? A. I don't think it would make a great deal of difference because we uniformly decline to furnish a pump on any terms of loan or agency basis unless we see pretty clearly that it is going to pay, to develop enough business to justify it. We frequently pull them when they do not pay.

Q. From your experience do you think that your competitors have exercised the same discretion in the conduct of their business? I am referring to such competitors as the Atlantic Refining Company and

the Gulf Refining Company. A. In our territory they are very lavish in the distribution of them, and my judgment is that it does not pay to distribute them as widely as they have.

Mr. Nesbitt: I would like to raise the point that as to a question of that sort it will be possible for us to get testimony definitely on such a point, and that that would be the proper method, rather than to develop it through the opinion of a competitor. Would not that be very much more profitable and the only sound 902
way of establishing the point which the attorney for the Commission has in mind? Whether these companies have been making investments that have not yielded any return, is a matter which I believe can only be shown from their own books or those who are familiar with them.

Examiner McCorkle: Yes, I—

Mr. Zechiel: Mr. Examiner, before you rule, let me get my word in.

Mr. Nesbitt: It would be very easy to prove it as a fact.

Mr. Zechiel: I believe it would be almost 903
next to impossible to prove that as a fact in any other way except by the observation of business men who see these things done. I do not think the Atlantic or any other company keeps sufficient accounting to show the cost of every installation of this kind. And I will say this, that if the defendants, the Atlantic Refining Company, or any other respondent, can show the actual cost of each of these installations, and can prove that what this witness testifies to from his experience is not true, it seems to me that is sufficient opportunity for

904 *Clarence Schock, Cross*

the Atlantic Refining Company or any other. And in case the Atlantic Refining Company, for instance, cannot prove it, and this sort of evidence is ruled out, the situation is left without any evidence at all. I think the Commission is entitled to the benefit of this gentlemen's experience in this line of work.

Examiner McCorkle: Your objection is noted, Mr. Nesbitt, and this matter will be brought up before the Commission. I do not like to rule it out, or leave it off the record.

905 Mr. Nesbitt: I know nothing about the books of the Atlantic Refining Company, of course, but it would be a most anomalous situation if the company was making these installations and could not show the cost of each individual one.

Mr. Zechiel: Now, Mr. Nesbitt, don't you—

Examiner McCorkle: Argument off the record, Mr. Reporter.

(Argument off the record.)

Examiner McCorkle: Proceed, gentlemen.

Mr. Zechiel: That is all.

906 *CROSS-EXAMINATION by Mr. Speer:*

Q. Prior to the coming in of these pumping outfits how was the gasoline distributed to the consumers? A. Prior to the regular underground tank and pump?

Q. Yes. A. Oh, generally in barrels or galvanized cans with faucets to them.

Q. What was the practice then as to the container, the barrel or steel drum, as to whether or not it was returned to the seller? A. Generally returned to the seller, yes.

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Q. And it was a practice usually was it not, it was considered that it belonged to the seller and was merely loaned? A. Yes, I think it is fair to say that is true.

Q. And if instead of doing that it was billed to him and then returned about the same time the bill was due, that amounted to the same thing as a loan? A. It is not so intended, but in practice it happens so. I have done very little steel drum business.

Q. Before you began loaning pumps I understood you to say you had your own filling stations as agencies? A. Yes.

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Q. And you, of course, owned the pump and outfit there? A. Yes, sir.

Q. Have you a trade brand or mark that you use? A. No. Since 1914, which is really the beginning of our active gasoline business we have been selling chiefly Texaco products, and today their trade brand appears on our pumps.

Q. You put your brand on your pumps? A. Yes, although we are independent jobbers buying from them.

Q. But you sell a brand that you are satisfied is suitable for the trade and you like to have it designated by your brand? A. Yes, sir, as much as possible.

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Q. In purchasing you seek to purchase a grade or brand of gasoline that will be satisfactory? A. Yes, sir.

Q. That is a valuable trade asset, is it not, to have a name under which you market your product? A. Yes, sir.

Q. And the reputation of which becomes established? A. Yes, sir.

Q. That is a valuable asset, is it not? A. In my case there is some value to the Texaco brand and there is some value to the goodwill I have in doing business, irrespective of the Texaco brand.

910 *Clarence Schock, Cross*

Q. That is your own personal touch with the trade? A. Yes.

Q. That is true of every company that sells its goods under some brand and which furnishes a good grade to the public—that that brand is a valuable business asset to the company, is it not? A. It is undoubtedly, certainly.

Q. And in developing a business in any community do you not seek to obtain places or stations where your goods are sold to the public as yours? A. Yes, sir.

911 Q. That is practically the only way a man can build up a trade, is it not? A. Well, it is one way. There are other ways, of course.

Q. Well, it is a very good way, is it not? A. It is a good way, yes, sir.

Q. You are pursuing that method of having agencies where you owned your own pump, who sold your product in that way to the public? A. Yes, sir.

Q. This method of loaning the pump accomplishes the same thing so far as getting your product to the public under your name, does it not? A. Oh, yes.

Q. And as a matter of fact it is cheaper and more satisfactory than the agency system, is it not? A.

912 That depends on how deeply you go into it. It all depends upon to what extent it is carried on. If you use a pump where there is not sufficient gasoline sold to justify the investment it does not pay, but it increases your selling cost to that extent.

Q. That would be true if it was an agency that you established at a place where there was not sufficient business? A. Yes.

Q. So that so far as that is concerned, that applies to both methods, does it not? A. Yes, that is true.

Q. Supposing you only put in pumps either under the lease system or loaning system at places where

business is sufficient to warrant it, the loaning system is less expensive, is it not? A. No more so, anyway.

Q. Is it not less, for this reason, at least it is more satisfactory: You do not have the responsibility of the accounts with so many different purchasers; that is true, is it not? A. To me it would not make a great deal of difference. To a large corporation it might. We are closer in touch personally with the people we deal with.

Q. You would not sell to those who were not absolutely responsible? A. Yes.

914 Q. As a matter of fact, to the ordinary dealer the agency system has its disadvantages, has it not? A. Well, in my experience I have not had any objectionable experience with it.

Q. Why did you change, then, to the loaning system? A. Simply because the customer demanded a value put upon the pump at which he could buy it whenever he was ready to take it over and it was a case of yielding to the man and giving them what they wanted.

Q. Could not you have continued him your agent and still given him that privilege if he wanted to buy the pump and cease being your agent? A. We probably could have. 915

Q. And that is the way you understand all of them operate under this loaning system; they give the loanee the pump with the option to buy it at cost? A. Yes.

Mr. Zechiel: I just want to point out that the contracts will speak for themselves, and it is not fair to ask a witness to characterize or describe the meaning of these various things.

916 *Clarence Schock, Cross*

The Witness: I will say, in explanation of my answer, that the only contract I am positively familiar with is the contract of the Atlantic as they used it a few years ago. But what their contract today is I don't know. But then they did have a purchase clause or option on the part of the customer.

By Mr. Speer:

Q. And that is why you adopted the same method? A. We had to do it because the people demanded it.

Q. And as far as you know, that is the method
917 pursued by others? A. I understand it to be, yes.

Q. As far as the Texas Company, which does not operate in your territory, is concerned, suppose it wished to come in and market its gasoline there, is not this method of loaning equipment to operators at points where they believed there was sufficient business to justify it, the best method by which they could establish and work up a trade? A. Well, it is one method.

Q. What other method might they use? A. The agency proposition, as I suggested.

Q. That would be according to what you have testified, as I understand, practically the same thing,
918 so far as expense was concerned? A. So far as expense is concerned, yes.

Q. They would have to buy the pump, install it, and make the man their agent? A. Yes.

Q. That is what they do when they loan a pump? A. What do you mean?

Q. When they loan a pump they have to buy the pump and install it for the man, just the same? A. Oh, yes; as far as expense is concerned there is little difference.

Q. If they gave an option to purchase they probably could get a man to take the pump easier than if

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they tried to make him an agent, the same as you found? A. I found it so in some instances; yes, sir.

Q. Don't you think if they were coming in there and trying to establish a business, that they could do it easier and at no greater expense, by adopting the loaning system, than if they tried to create agencies? A. The trouble about the loaning system is that it leads to indiscriminate loaning, I mean the loaning system with the provision of purchase. The presumption is that when the contract is made on the face of the contract there is an intent ultimately for the dealer to take over the pump, but he never does, or very seldom does.

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Q. I am not talking about that, but that is really— A. That is the difficulty.

Q. That is really the best method, instead of trying to create agencies? A. No, I would not say it was the best method..

Q. You think by creating agencies they would have more of a hold on it? A. I don't think they would do it so indiscriminately. I don't think they would put up so many pumps.

Q. You think they probably would not establish quite so many stations under the agency system? A. Not quite so many stations under the agency system. I think they would establish agents at localities so as to be sure to fill the needs, the convenience of the public, where on this other system they are put out very thick and in large quantities, and unnecessarily so.

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Q. But they are put out for the purpose of selling gasoline, I presume, through them? A. Certainly.

Q. They make no profit out of them if they don't sell something? A. It is a question in my mind whether they are put out only for the sale of gasoline, because with the big companies the advertising feature of the pump means a good deal to them.

922 *Clarence Schock, Cross*

Q. It is a very valuable thing for them, is it not? A. They probably count it as an advertising proposition.

Q. Even if they don't make very much through that particular pump still it advertises their product and helps their business generally? A. I think that is possible.

Q. Don't you think if the Texas Company wanted to come in there that it would establish a business more economically by adopting either this loaning system or agency system than it could by establish-
923 ing and building a service station? A. My judgment is that the small stations in the hands of the dealers are more economical than the large service station, and my information is that that is the experience of the large companies.

Mr. Speer: That is all I have, I think.

By Mr. Guerin:

Q. Could you furnish me with the specific instances wherein your company lost business to the Atlantic Refining Company? A. I think I explained when I made that answer that I did not have any cases in mind. If the Commission desires it I can send an af-
924 fidavit down here giving you a number of them. But I did not know what I was coming here for today; I did not know what kind of questions would be asked me. So you have taken me totally unprepared on that.

Mr. Guerin: I will say, if I may so state, that such evidence should be stricken from the record and not held binding on the Atlantic Refining Company with specific evidence.

Examiner McCorkle: He has stated he knew of cases.

925

The Witness: Oh, undoubtedly.

Mr. Guerin: May I have an objection noted on behalf of the Atlantic Refining Company?

Examiner McCorkle: Yes. Note the objection of counsel to that question.

Mr. Zechiel: Let us have it specifically pointed out.

Mr. Guerin: My objection is against any general statements which do not give the company opportunity to rebut individual instances.

926

The Witness: I recall just now—if you want specific instances, I will give you two. One is in connection with the Gulf and one with the Atlantic.

Mr. Zechiel: Go ahead.

The Witness: Harvey Williams, West Orange Street, Lincoln, had one of our pumps which was thrown out because the Gulf offered one to him. There is a case where I had trade, and they did it. Another instance was H. M. Stahler, along the River Road, at Rockville, near Harrisburg. We had a pump in, and through the persuasion of the Atlantic ours was thrown out and theirs went in. There you have the case both ways.

927

By Mr. Guerin:

Q. You say through the persuasion of the Atlantic. That is rather a conclusion. I think the Commission is after facts. They want the facts about a particular case. A. We were not there when the persuasion occurred, but we have it from the customers all right, the customers themselves.

Mr. Guerin: I ask that an objection be noted, for the reason that the customers are not brought in so that we may have the best evidence, and have an opportunity to examine the customers.

928 *Clarence Schock, Re-direct*

By Mr. Zechiel:

Q. In that respect I want to ask whether or not these statements were given to you at the time you were inquiring, concerning the fact that this pump was removed? A. Whether these statements were made to me at the time the pump was removed?

Q. Yes. A. Yes, certainly. I will say either to me or my representatives. It would take a little refreshing of my memory, and some other memories, probably, to give you the details in the shape you require it.

929

Examiner McCorkle: Well, just state what you know. Are there any other questions?

By Mr. Speer:

Q. Mr. Shock, if this practice of loaning pumps was discontinued by order of the Commission or otherwise, by the companies in your community, would you not then in all probability go back to the agency system in the distribution of your gasoline? A. I would prefer to furnish no pumps at all, but the chances are that I would be compelled to do that to a certain extent; I would say to a limited extent.

930

RE-DIRECT EXAMINATION by Mr. Zechiel.

Q. Do you sell, now, your product to retailers who own their own equipment? A. Oh, yes.

Q. How many of such instances have you comparatively speaking? A. We have more who own their own than the others. That is something a little hard to answer.

Q. But your gallonage now is larger to retailers owning their own equipment than to retailers to whom you have loaned equipment? A. That may be true in some instances, and the reverse true in other cases.

Q. I am asking you now. I thought I was quoting your answer. I ask you as to what relations there is between your gallonage to retailers who own equipment and as to retailers who have leased equipment from you? A. I cannot answer that question, Mr. Zechiel.

Q. Could you give an approximation? I thought you said— A. I would say that half of our product —it is a guess for me to make the answer. We have some large customers who own their own equipment. It may be that we sell half of our output through pumps of our own, but not any more than that. I 932
am unable to answer that question accurately now. I could do it by reference to our accounts.

Q. In your best judgment if leasing and loaning were prevented, discontinued as a practice, do you think there would be a greater percentage of installations with retailer-owned equipment? A. Oh, yes, undoubtedly.

Q. How many of the parties, in your best judgment, now who are at the present time leasing and loaning equipment, would buy their own under such circumstances?

Mr. Speer: That is a mere guess.

Mr. Zechiel: I am pressing the question. 933

Mr. Speer: That is guessing the future, and not like estimating on the past.

Mr. Zechiel: I am pressing the question.

The Witness: That is a mighty hard question to answer.

By Mr. Zechiel:

Q. You would not want to venture an answer? A. No. Many of them I think who at the time would not buy would ultimately do so. It would probably

934 *Lawrence MacRae, Direct*

delay the installation—but just how many, it is hard to say.

Q. Do you think that the failure on the part of retailers who now have leased and loaned equipment, to buy such equipment, and the loss to the public of those centers as distributing centers, would inconvenience the public? A. Oh, no; I don't think so.

Mr. Zechiel: That is all.

RE-CROSS EXAMINATION by Mr. Nesbitt:

935 Q. You have some large customers, have you, who have installations that are loaned and leased at a nominal rental? A. Yes.

Q. Would your marketing problem be complicated or simplified if an order were issued enjoining this practice of loaning or leasing at a nominal rental? A. It would disturb it temporarily, undoubtedly, but what the ultimate outcome would be I am unable to say. It is a question, to my mind, as to what should be done.

Witness excused.

936 ---

LAWRENCE MacRAE, was called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. Your name is what? A. Lawrence MacRae.

Q. And your address? A. Charlotte, North Carolina.

Q. With what company are you connected there? A. The Brady System Corporation.

Q. What is your connection with that company?

A. I am one of the officers of the company, vice president and secretary.

Q. How long have you been with that company? A. We were organized the first of August.

Q. This last August? A. Yes, 1919.

Q. What was your business prior to that time? A. I was with the Government during the war; secretary to the Finance Committee of the Senate.

Q. What is the general business of your company? A. The jobbing of pumps and tanks.

Q. What equipment do you job? A. The Brady Systems manufactured by the Visible Measure Gaso- 938
line Dispenser Company of Louisville, Kentucky.

Q. What is the general territorial area of your concern? A. We have thirteen states and the District of Columbia—the northern states of New Jersey, around the Atlantic coast; Florida around the Gulf coast to Mississippi. The inland states are Virginia, Ohio and West Virginia.

Q. What is your general method of conducting your business? A. We appoint state agents, and these state agents appoint a subagent, and they sell this Brady System.

Q. What is the thing they actually sell? A. It is an underground gasoline tank. It contains from 280 939
to 1,000 gallons, with a register, a gauge, indicating automatically the quantity of gasoline put into this underground tank, and the quantity that is taken out.

Q. Is this commonly known as a curb pump? A. Yes.

Q. Used for the sale and distribution of gasoline? A. Yes. The system complete is made up of this underground tank and a pump, either a hand pump or an electric pump, encased in a tower or stand that is erected on the curbs, or on corners, or wherever you choose to put them.

940 *Lawrence MacRae, Direct*

Q. To whom do you sell them? A. You mean through whom we sell them?

Q. To whom? A. We sell them to stores; a large part of our trade is with country stores, various general merchandise stores, drug stores and hardware stores, largely on highways, thoroughfares. We also sell them to the city trade, garages, and some stores in cities to filling stations to a small extent.

Q. Are you acquainted with the Gilbert & Barker pump? A. Yes.

Q. The Bowser, and the Wayne, of Cincinnati?
941 A. Yes.

Q. Are you in competition with those concerns? A. Yes.

Q. In the conduct of your business have you shipped your equipments from one state to another? A. Yes, all shipped from Louisville, Kentucky.

Q. They are all manufactured there, are they? A. Except the tanks. I understand they are being manufactured now in other states.

Q. In what states? A. In other states, Missouri, for instance, Ohio.

Q. Are you acquainted with the general practice used by a number of oil companies of leasing and
942 loaning such equipment? A. I am generally acquainted with it. I have never seen a contract.

Q. But you are acquainted with the practice? A. Yes, sir.

Q. In the course of your business have you had occasion to meet it with various purchasers and prospective purchasers, the general retail trade? A. I have in a limited personal way. My associates and our salesmen have reported instances where they have come up against that competition.

Q. In that connection have you ever lost customers or prospective customers because of your practice of leasing and loaning such equipments?

Mr. Speer: The question is objected to as immaterial, incompetent and irrelevant.

Examiner McCorkle: Note the objection. The witness may proceed.

The Witness: Yes, I have.

By Mr. Zechiel:

Q. State more in detail your general experience along that line. A. I have in mind an instance where I personally came in contact with such competition. A few weeks ago a couple of gentlemen came into my office and said they were interested in buying for 944
their firm one or more of our systems, that they had selected it as being just what they wanted and what their principal owner preferred to buy. Well, after an hour or so talk they wanted to know if I could obtain an immediate, quick prompt shipment. I said I would wire the factory. I wired the factory and got an answer that day. The next morning I went around to see the head of the firm—his representatives had left the city. "Why," he says, "I can get that, I have been promised that pump by an oil company, that they would give it to me," he said. He took hold of the 'phone and called up an oil company, and from the conversation I judge he had made the deal 945
with them.

Q. Do you know what company he called? A. He said he called the Standard Oil Company.

Q. Do you know as a matter of fact what Standard Oil Company is operating in that territory? A. I do know that they sell their product in that territory.

Q. Do you know the name of the Standard Oil Company that is operating in that territory? A. No, I do not. The Standard Oil Company is only known to me as the Standard Oil Company.

946 *Lawrence Mac Rae, Cross*

Q. What other experiences along that line have you had? A. Our manager in Virginia, Mr. C. V. Kuester, reports that practically all of the gasoline dealers in Danville and in other cities in Virginia do not own their dispensing equipment. The same report comes to us from our South Carolina representatives.

Q. Have you lost customers or prospective customers from that practice in those territories, if you know? A. I cannot say specifically in either of those states that we have lost them. I know this, that our representative goes down and he comes back and
947 says that he cannot do anything with the man who can get a tank and pump simply by asking for them.

Q. And that same experience is general over your territory? A. It is reported from Ohio, also.

Mr. Zechiel: That is all.

CROSS-EXAMINATION by Mr. Speer:

Q. Does your firm sell pumps direct to oil companies? A. We have never sold any so far. We do not sell them.

Q. Your policy is to sell the pump direct to the user of it through your salesmen? A. Yes, that is
948 our practice.

Q. And do you not sell to local dealers for resale, or anything of that kind? A. No, sir; we do not.

Mr. Speer: That is all.

By Mr. Nesbitt:

Q. Just one question. Have you ever made an effort to reach the oil companies to sell them in any way? A. No, we have not, except through our factories. They handle sales of that character.

Q. I am not quite clear. You are in the jobbing business, are you? A. Jobbers.

Q. You do not have a factory? A. Do not own a factory.

Q. I see. Then your organization is a sales organization? A. Absolutely.

Q. That organization has never made an effort to market with the oil companies direct? A. We have never made an effort to market with the oil companies.

Q. You have never made an effort to market with the oil companies direct; is that right? A. That is correct.

By Mr. Speer:

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Q. And so far as you know the manufacturer of these pumps may sell them direct to the oil companies? A. Possibly so.

Q. And for all you know those oil companies may lease or loan some of these same pumps in which you are dealing? A. Possibly they are, yes.

By Mr. Nesbitt:

Q. Are there any of those pumps to your knowledge that are loaned and leased at a nominal rental? A. Not one.

Q. How many kinds of these visible pumps are manufactured? A. I think we come in competition with some five or six. 951

Q. You do not know then positively, do you, that none of your kind, not one of your kind of pumps, is leased at a nominal rental anywhere, do you? That is, you never have made an investigation as to that? A. No, I have never made an investigation.

Mr. Nesbitt: That is all.

By Mr. Speer:

Q. Have you exclusive right in your territory for the sale of these equipments? A. We have exclusive rights.

952 *W. J. Metzel, Direct*

Q. And the manufacturer could not sell a customer in your territory except through you, according to your contract? A. That is true.

Mr. Speer: That is all.
(Witness excused.)

Thereupon, 4:40 o'clock P. M. the hearing was adjourned until tomorrow, Tuesday, November 25, 1919, at 10 o'clock A. M.

953

Washington, D. C., Tuesday, November 25, 1919.

Met at 10 o'clock A. M. pursuant to adjournment.

Before: Examiner George McCorkle.

Appearances, as before noted, and the following additional appearances:

Mr. J. H. Hayes, on behalf of the Standard Oil Company of New Jersey.
Mr. Yale L. Schekter, in behalf of Atlantic Refining Company.

954

W. J. METZEL, was called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name, please? A. W. J. Metzel.
Q. What is your address? A. 4110 Keyser Bldg., Baltimore, Maryland.
Q. With what concern are you connected? A. The Red "C" Oil Manufacturing Company, Baltimore.
Q. What is your position with that company? A. Traveling salesman is my official title.

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Q. How long have you been connected with the Red "C" Company? A. Since June 1, 1890.

Q. What have been your various employments in the meantime? A. I have been connected with the selling and marketing of oils.

Q. So that in the course of your experience you have had occasion to travel about over the territory? A. Yes, I am continually traveling, all the time traveling.

Q. What is the general territorial extent over which the Red "C" Oil Company does business? A. Southern Pennsylvania, Delaware, Maryland, Virginia, West Virginia and North and South Carolina is our principal territory.

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Q. In the course of your business do you ship your products back and forth from your main office or one plant and these various stations, or how do you handle your business? A. We supply stations from Baltimore sometimes, sometimes from the refinery of the Oil Petroleum Company, at Pittsburgh, and some other sources.

Q. What is the product which your company handles? A. Illuminating oils, gasoline, benzine, lubricating oils, a general line of oils everything made out of petroleum.

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Q. In connection with your business do you also deal in oil tanks and pumps used for distributing these products? A. Yes, sir, we sell them.

Q. How long have you been engaged in that branch of the business? A. Well, I suppose fifteen or twenty years. We have been selling pumps occasionally.

Q. And in the sale of these pumps is it your business policy to sell them at a reasonable profit on the transactions with respect to the pumps? A. Yes, we always sell them at the manufacturer's price, what

the manufacturer of the pump would sell it to the buyer.

Q. Which would generally be known as the retail price, do you mean—the manufacturer's retail price? A. Yes, the manufacturer's retail price. We always maintain that and we try to make a profit on the tank.

Q. Do you in connection with your business ever lease or loan such equipments? A. We have been compelled to do it occasionally, yes, sir.

Q. How long have you been engaged in the leas-
959 ing and loaning of these equipments? A. I suppose about seven or eight years, possibly seven or ten years, but most of them in the last few years.

Q. And during that time when you have been leasing and loaning, have you also sold pumps and tanks? A. Oh, yes, we sell them whenever we can.

Q. About how many pumps has your company sold in the last four or five years? A. Sold?

Q. Yes. A. I could not say; I don't know.

Q. Could you say how many you have sold compared with the number you have leased, approximately? A. I should say we sell twenty-five pumps to one lease.

960 Q. How many leased contract pumps have you under installation now? A. In my special territory where I travel there are about a dozen.

Q. What was the occasion of your beginning the leasing business in the pump game? A. In order to hold the customer's trade. Other concerns would come along and make the proposition to loan a pump and tank. We would try to sell the man the pump and tank and very often would succeed in doing it, but when he would not buy it, why, as a last resort we would then loan it to him when we could not hold his business without that.

Q. Who are your competitors? A. The Standard Oil Company, the Gulf Refining Company.

Q. What Standard Company is that? A. The Standard of New Jersey; the Gulf Refining Company, the Texas Company, the Indian Refining Company, the American Oil Company of Baltimore.

Q. When you speak of your competitors offering to lease or loan these equipments to your customers, are you referring to all these customers? A. All but one, all but the Indian Refining Company.

Q. How did you become acquainted with the fact that your competitors were offering to lease and loan 962
these equipments? A. From the customer.

Q. How did that arise? A. He would tell one of our drivers, or tell me on my visits, or would write to the company, that he had been offered a free pump and tank outfit if he would sell nobody's else gasoline, but did not want to quit us, and if we would do the same thing he would keep on buying our gasoline.

Q. Did you ever lose any customers because of that practice? A. Yes, quite a number of them; yes, sir.

Q. Would you say you have lost a small or large 963
amount of business because of that sort of practice on the part of your competitors? A. Quite a good deal of business; we would lose sometimes the whole business in a village or town.

Q. Because of that practice of your competitors? A. Yes.

Q. You also sell lubricating oils to the same customers to whom you sell your gasoline? A. Yes, sir.

Q. Who in general are your gasoline customers? A. The garage trade are the principal customers, then

hardware stores, drug stores, druggists like to have an outfit on the outside to attract tourists so as to sell their soda water, toilet articles, and so on. The pump attracts them for gasoline, and while their tanks are being filled they hope to interest them in other stuff. Mostly of course, the gasoline is sold from the garages.

Q. Then your trade in the sale of gasoline is very general to all the retailers of that product? A. Yes, sir.

965 Q. Have you sold your pumps in a general way to the same trade? A. Yes, sir.

Q. You have leased and loaned generally to the same trade? A. Yes, when we were compelled to do it in order to hold the customer.

Q. Have you ever lost any of your lubricant business because of this practice of leasing and loaning of gasoline pumps? A. Very often, yes, sir. The company would get the good will of the prospective customer, and say, "We will install you a large tank and pump for gasoline," and he would sign the contract, which would cause him to buy all of his gasoline from this company. Then as a side agreement with the salesman, "Now, we are giving you this out-
966 fit free of cost and we are installing the tank ourselves. Now, you must give us the preference on lubricating oil and on your coal oil." The consequence is that on a good many occasions we would lose out on all of his business.

One customer I can refer to particularly. I got half of his coal oil business, half of his gasoline business. He had his own equipment, his own coal oil tank and own gas tank. His gasoline tank was small size, only held about 200 gallons. He would run out and we would have a good chance to fill it up, the

same as our competitor. That did not suit a competitor and he went to him and offered him a large underground tank and pump, enough to keep him going for several days between trips, if he would buy all of his gas from them. Well, he told our driver about it and wanted to know if we would put in one. We said no, we would not, that we did not do that kind of business very seldom. So he took the pump and tank from the Standard Oil Company. On one of my visits along there shortly after that, he had stopped buying his coal oil from us, and I said, "Why don't you buy coal oil from us?" He said, "The salesman told me if he gave me this tank and pump that he would have to have the coal oil business, too." That was not incorporated in the contract, but his coal oil and also his motor oils was a gentlemen's agreement on the side with the salesman, that that part of the business would go with it. 968

That very often happens. In some cases we are able to sell them lubricating oils and coal oil, outside of the pump contracts, but it generally goes with it.

Q. What is your experience in the conduct of business in your territory? Do the retailers of these products generally have more than one installation on a particular piece of property? A. Yes, where a retailer has a pretty big distribution, why he will get pumps from two concerns, or he will get two pumps from one concern. One of my customers had two five-gallon stroke pumps with large tanks, each one of them right at the intersection of a cross road. His building is on the corner, and he has a five-gallon stroke pump, a Gilbert & Barker, on one side, and another on the other side. He runs a little hardware business. 969

Q. You say they are both pumps furnished by your company? A. No, by the Standard Oil Company.

970 *W. J. Metzel, Direct*

Q. In a general way what per cent of the retailers, large and small in your territory, have more than one installation? A. It is a small per cent that would have more than one installation, very small.

Q. And of that small per cent you speak of that have more than one installation, what per cent of that small per cent actually buy gasoline at the same time from two different companies? A. Well, they are not many; very few. We had put in a pump at Shepherdstown, West Virginia, the Shepherdstown garage, in order to hold our gasoline business. They pre-
971 ferred it but they said if we did not put it in they would get the Standard Oil Company to put it in. We put it in. After we run our pump there for a couple of years, the Standard Oil came along and dickered with them until they got their consent to put their pump on the other corner of the garage, opposite from ours, at that same place, so as to divide up our gasoline product with that garage.

Q. So far as you know in your territory has that sort of thing happened frequently? A. Right frequently recently, in the last year. There is a case going on right now, at Edinboro, Virginia, where
972 we had a pump in. The man told us we would have to put in a pump if we wanted to get his business. It had not been there three weeks, before he installed a five-gallon stroke pump, and told us we would have to move our pump, that he wanted to put that five-gallon stroke pump where our pump was setting.

Q. Was that a pump he had bought? A. No, sir, it was loaned to him by the Standard Oil Company without any cost, and they agreed to dig the hole and plant the tank for him besides.

Q. And would you say on the whole that the result of leasing and loaning oil tanks and pumps to

retailers, that the result of that is that such retailers buy their product entirely from the company leasing the gasoline equipment? A. Largely so, yes, sir; they get the preference. The only way the other fellow can sell him gas is to come along and cut the price of the other fellow, to get in.

Q. Well, where there is a lease and loan equipment, would that method be successful without installing another pump? A. Not unless he has some other outside storage capacity of his own—you can't sell him at all.

Q. And is that common, or not? A. Not very, no, 974
sir. When he gets an old pump that is out of date he disposes of that, when he gets a new outfit, and he has not any other storage. The only way you can put anything in there is to bring the tank along with you and put it in and try to cultivate his good will to give you a little show, a little preference.

Q. In your experience in the sale and distribution of gasoline and lubricating products generally, do you think this practice of leasing and loaning oil tanks and pumps for a nominal consideration, under a condition or understanding that the lessee is to use in connection with such equipment only the gasoline of the party furnishing the equipment, is a good busi- 975
ness practice?

Mr. Speer: The question is objected to as incompetent, immaterial and irrelevant.

Examiner McCorkle: Note the objection. The witness may proceed.

A. No, it puts the buyer under an obligation to a concern that he is accepting those favors from, and destroys his commercial liberty, and he is tied up to buy his products from that concern. He is under a contract very often, and under a moral obligation, to

buy all or most of his oils and gasoline, and so on, from the company that installs this equipment.

By Mr. Zechiel:

Q. Are you acquainted with the practice of entering into agency agreements with certain retailers of gasoline whereby the retailer is made an agent and the equipment is furnished by the oil company? A. Yes, sir, I have known instances of that, in order to get the custom or the trade of a certain customer, they install the equipment; then appoint him as
977 their salesman to sell himself. I know of one instance in Baltimore where he got $75 a month salary for selling himself gasoline that he bought from a certain company.

Q. Your company has never practiced that sort of business? A. No, sir.

CROSS-EXAMINATION by Mr. Hayes:

Q. What is the name of your company? A. The Red "C" Oil Manufacturing Company.

Q. How long have you been engaged in the oil business? A. The company?

978 Q. Yes. A. It was incorporated in 1878.

Q. No, I am speaking about you? A. Me?

Q. Yes. A. I have been with the Red "C" Oil Company since June 1, 1890, continuously.

Q. Is it a general practice of all oil companies to lease and loan pumps in the manner which you have testified here this morning? A. As far as I have come in contact with them, they have, with the exception of one concern.

Q. That is the only exception where they do not engage in the uniform practice of leasing and loaning pumps? A. Yes, sir.

Q. Have you seen the form of contract used? A. I have seen them, yes, sir.

Q. Does that contract provide that the lessee shall use no other gas in his garage except that of the lessor? A. The contract says that he shall use no other gasoline in that pump outfit.

Q. In the pump outfit? A. Yes, sir. If he does he is given fifteen days' time to quit buying the other fellow's stuff, or lose his pump.

Q. You say you sell your gas and products wherever you can find a customer? A. Yes, sir.

Q. Wherever you yourself can find a customer? 980
A. Yes, sir.

Q. And you sell about twenty-five pumps to one that you lease? A. I think that is about the average.

Q. And that average has continued for how long? A. It has only been in the last couple of years. Prior to that it was the rarest thing we ever would loan a pump, maybe not but one or two in a year.

Q. What kind of pumps do you use? A. Why, I have a catalog from four different manufacturers of pumps. We give the man whichever he prefers.

Q. You give the man the pump he wants? A. Yes. I have manufacturers' catalogs and prices with me, and let him have his choice. 981

Q. Do you order that pump from the main office of the pump company, or through a local salesman? A. If the tank company has a local agent in Baltimore we generally order from him; but if not we send the order direct to the factory, and the factory ships direct to the customer.

Q. Your business has increased during the last couple of years over what it was previously? A. We are selling more stuff than we used to sell.

Q. Has the business of leasing pumps injured the amount of gallonage that you sell per year of gasoline? A. Injured it?

Q. Yes. A. No, sir, it has increased it. We would not put them out if it did not.

Q. With reference to this five-gallon pump down in Virginia, what kind of pump was that? A. A Gilbert & Barker pump.

Q. Did I understand you to say Bowser? A. The one that we put in?

Q. This five-gallon stroke pump down in Virginia. You said in your direct-examination a five-gallon Bowser pump. A. A five-gallon stroke pump.

Q. But you said Bowser. Did you mean Gilbert
983 & Barker? A. Yes, sir; it was a Gilbert & Barker pump that went in there.

Q. It was not a Bowser? A. No, sir; it was a five-gallon stroke pump. That is what I thought I said.

Q. Where was that place? A. Edinboro, Virginia.

Q. When was that? A. About thirty days ago.

Q. Thirty days ago? A. Yes, sir.

Q. Can you say how many pumps you have seen put in under those arrangements down in your territory in the last year? A. Alongside of where we had one, you mean?

984 Q. Any place? A. How many free installations there have been?

Q. Yes. A. I could not begin to count them. They are too many.

Q. You could not begin to count them? A. No, sir.

Q. You have at the same time put in your pumps also on a similar arrangement, or have you sold most of yours? A. We have sold most of ours. We only have six pumps working in the Valley of Virginia.

Q. You have not had much difficulty, then, in selling your pumps, have you? A. No, we can sell them most every time.

Q. You are a good salesman. That is all.

By Mr. Speer:

Q. Would it help the situation any from your point of view if the companies instead of leasing and loaning the pumps would place them by good agency contracts, such as you have mentioned? A. How is that?

986

Mr. Speer: Read the question.

(The pending question as above recorded was repeated by the stenographer.)

A. I don't know what you mean by agency contracts.

Q. You have mentioned cases where instead of the company leasing and loaning the pumps to the operators installed the pump and made the operator their agent? A. Oh, yes.

Q. And paid him a salary or commission to sell the oil in that way, making it a substation or agency station. Instead of leasing and loaning the pumps, the agency system was adopted. Would it help the 987 situation any from your standpoint? A. Not if the outfit sold belonged to the oil company that made the agency proposition, not a bit.

Q. I am assuming of course that the company is making that a substation, an agency of their own, that they have the equipment and are employing the operator to sell for them? A. I don't see where it would alter the conditions at all, because he would still be tied up with the company that furnished the equipment or made the agency.

988 *W. J. Metzel, Cross*

Q. Then you say that is equally as bad a practice as the leasing and loaning? A. Yes, sir, I cannot see a particle of difference.

Q. Do you mean to say that a marketer who is manufacturing gasoline and selling it to the public, has not the right to establish an agency for the sale of his product to the ultimate consumer? Do you say that is a bad practice? A. He has got the right to sell his stuff wherever he can.

Q. Yes. A. But he has not any right to tie the fellow up so that he cannot buy someone's else gas.

989 Q. If it is his agency, if he owns it, and has the man in his employ, he has the right to have such a station, I take it, even from your standpoint? A. No, sir; it ties the man up so that he can't handle the other fellow's gas.

Q. That is the purpose of it, to make a place where the marketer will sell his product to the public; is not that the purpose of it? A. Yes, sir, that is the idea of it.

Q. Has he not as much right to make a small agency like that, where it will accommodate the traffic going along the road, as he has to put in a large service station and expend a lot of money?

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Mr. Burdeau: That is a legal question. Everybody can see that.

Mr. Hayes: You have been asking legal question, and I want to test his knowledge of the law.

Mr. Zechiel: Go ahead.

Mr. Speer: Read the question to him.

(The pending question was repeated by the stenographer as above recorded.)

The Witness: Not if that man is in a general business where he is selling all kinds of gas, because

he has some customers that want somebody's else make of oil or gasoline. If you start the place and put a salaried man of your own there where he don't sell anything but gasoline and lubricating oil, that is your own business. But when you get a garage man who is selling all kinds of goods, tires, accessories, and everything, and you make him your agent, then you are interfering with his commercial liberty, when you don't allow him to buy gas from anyone else.

By Mr. Speer:

Q. So far as the gasoline is concerned? A. Gaso- 992
line and oils, yes, sir.

Q. Is not this your theory, that the large marketer of gasoline should sell to the local retailer and allow him to take any pump he pleases, to buy from whom he pleases, and let that man, the garage man, or whatever you call him, or the local retailer, let him supply the automobile people and the ultimate consumers? A. Yes, sir.

Q. That is the only way that the business ought to be conducted? A. Yes, sir, and not to sell the consumer at all.

Q. You say the large marketer should not bring 993
his gasoline and sell it from small stations to the owner of the automobile? A. No, I did not say that.

Q. He should be compelled to deal through the local retailer? A. No, sir, I did not say that at all.

Q. If he is going to sell to the automobile man, the ultimate consumer, is it not necessary that he have a number of small stations along the road? A. Yes, sir.

Q. Where the driveway goes? A. Yes, sir.

Q. If he puts in a small station like that, and makes the man his agent, that is then an agency contract, is

it not? A. And makes the man that is in business there his agent?

Q. Whether he is in business or not? A. If he is engaged in a general line of business you are interfering with the other fellow selling him, too.

Q. Even if he is not engaged in any other line of business, if here is a corner that is a good place to sell gasoline, with automobile people driving along the road— A. Yes, sir.

Q. And the marketer goes and puts a little filling station there and hires a man to run it, he sells nothing but his gasoline there, does he? A. That is, if there is nothing else sold there but gasoline and oil; but if he has got a store or business there, selling general merchandise, or something like that, then you are tying him up so he can't buy stuff of somebody else.

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Q. Only in gasoline? A. Yes.

Q. The man that is not selling anything else is tied up so he can only sell gasoline? A. He is not trying to sell anything but gasoline, no, sir.

Q. You mentioned that you have leased this equipment to retailers who were going to put out the tank they had when this lease was granted to them. Was that a tank of yours they had in? A. No, sir, it was an old antediluvian tank that had been used for a long while that was not sufficient for his present needs.

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Q. You had been selling him gasoline? A. Yes, sir.

Q. You had been selling him all he used? A. Sometimes.

Q. Is that not a fact that you would wish to make a man a regular customer if you are going to supply him, so that you would know his needs and would

send out your tank wagon expecting to supply him from day to day? A. In all cases like that I would sell him a larger tank, a larger pump. I would not go and offer to give him one because that would not be my way of doing it.

Q. That is a fact, though, is it not, that before you began this leasing, that your customers as a rule took no gasoline but yours? A. No, sir, not entirely so. Sometimes we get a division of the business; sometimes we get it all and sometimes we get part of it.

998 Q. Is it not very unsatisfactory to be furnishing through a tank wagon gasoline to a man with a filling station who today takes yours and tomorrow takes somebody's else? A. No, sir.

Q. And you never know whether he needs any or not? A. He can always 'phone whether he wants it or not. That is the way I would like to see it done, where a man is a free agent and can buy from the fellow who comes along. I will take my chance of getting the business against anybody.

Q. As a matter of fact you are able to get the people who are dealing with you to take your gasoline practically exclusively, or you were, until this loaning system began? A. We could get all the business we 999 could take care of, yes, sir.

Q. You have not answered my question yet. It was a fact that the people you were furnishing gasoline to were taking from you as a rule exclusively—as a rule? A. Part of the time that way, yes, sir. I don't know as a rule, no, sir. We would get a division of business in most instances. We did not have all the man's business as a rule.

Q. Is it not a fact that you leased some pumps to retailers, garages or others, who had no pump at all, that you were starting in business? A. Yes, we have

done that in order to get business because he said he was going to buy his gasoline from the company that did do it.

Q. That was a new business instead of an old business? A. I reckon it would be.

Q. You testified in chief you had to do this to hold business, but as a matter of fact it is done just about as much, is it not, to get new business as to hold old business? A. When a new concern starts up he don't think of buying an outfit any more. The outfits have been handed around so generally that he don't have
1001 to buy one.

Q. When a new oil company comes into your territory to compete this is the method by which they generally succeed in establishing the trade, by loaning the equipment to a new garage that is being started up? A. Yes, sir.

Q. And it is mostly to the new places that they succeed in making the loans, rather than going to old places and getting them to take out their old tanks? A. No, sir. In the case of a man who has got a garage on this corner (indicating), and he has an old outfit, and a new concern starts over there (indicating), and he gets a new outfit, this fellow over here
1002 wants a new outfit, and the concern that puts it over there puts it over here.

Q. These new outfits have a new way of distributing gasoline? A. No, sir, the same way, the same tank and pump, only it is painted new and looks better. The old pump works as good as the new.

Q. Probably the other one does not work so well, being old. A. Yes, it works all right. But if you can get in a new pump there it pleases him, and he will tie up with you and you will get his business. The old pump belonged to himself and everybody had a shot at

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his business, but the concern that goes in and puts in a new pump, nobody gets his business but they.

Q. Are there more oil companies operating in your territory than two years ago? A. Yes, sir.

Q. The number of companies operating and selling gasoline has increased in the last few years? A. Yes, sir.

Q. That increase has been since this leasing and loaning system came into vogue? A. Yes, sir.

Mr. Speer: That is all.

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By Mr. Nesbitt:

Q. The Red "C" Oil Company has been doing business for how long, did you say? A. It was incorporated in 1878.

Q. There was a time, was there not, when the Red "C" Oil Company, in part of the territory where you are now doing business, have practically all the local trade; is that true? A. In a good many cases we had.

Q. You were very strong in the territory through the states that you mentioned? A. Yes, sir.

Q. And in a good many of those localities you were the only company doing business? A. No, sir. I never struck a place in the world that I did not run against the Standard Oil.

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Q. Have there not been sections in the State of Virginia and North Carolina since you have been connected with the Red "C" Oil Company where that company was the only company doing business? A. No, sir. There were a good many cases where I got it all away from the other fellow.

Q. And you had the whole business there? A. Not all of it; I had most of it.

Q. Practically all of it? A. Most of it, but the other fellow was working there all the time. He had a station on the spot.

Q. Did the Red "C" Oil Company during your experience with it ever make any contracts with customers for the sale of gasoline covering a period of time? A. Not for ten years or longer.

Q. You don't have any— A. We cut out gasoline contracts at the same time the Standard cut them out, because if they did not know what the price was going to be we knew we did not. (Laughter.)

Q. Do you know that the Standard does not have any contracts for the sale of gasoline in your territory? A. They have contracts for the sale of gaso-
1007 line but the price is left open. In these pump arrangements the man signs up to use the gasoline from them but the price is open, no market price specified—the market price.

Q. Do you know that to be a fact? You saw those contracts? A. The contracts, yes, sir.

Q. Have you ever seen those contracts? A. I have looked at them, in a way. It says they shall not put any gasoline in this pump but Standard gasoline. "If you do we will take it away from you."

Q. But you never saw a contract that provided that all of that gasoline should be bought from the company furnishing the pump A. All the gasoline he
1008 used in that tank.

Q. But not all the gasoline that was dispensed from that station A. It did not tell the man he should not buy somebody's else gasoline, no, sir, but said that all the gasoline that he sold from that pump should come from the Standard.

Q. Why, was it, Mr. Metzel, that you dropped the practice of having customers sign written contracts for the purchase of gasoline covering a period of time? A. Why we did it?

Q. Yes. A. It has been a long time ago. Well, because we did not know what the price was going to be.

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Q. You wanted to get the advantage of the price, of a change in price? A. It was just this way. The gasoline contract, and every other oil contract I have ever seen, was all one sided. You can make a man a price of so many barrels of oil to cover a certain period. If the price goes up he has got it bought, and if the price goes down you give him the benefit of the drop. It is all a one-sided arrangement.

Q. Do you endeavor to reach the ultimate consumer in your sales of gasoline? A. No, sir; we only sell the retailer.

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Q. Your business is a jobbing business? A. Yes, sir, a jobbing business.

Q. You don't endeavor to bring your company into direct contact with the consumer? A. Oh, yes; we advertise to the consumer.

Q. Oh, yes, you advertise. A. Our products, and that a man can get them from such and such a dealer.

Q. But you don't deliver direct to the consumer? A. Unless some one got down and out of a supply and asked the tank wagon to deliver them some on the spot, but we don't solicit that.

Q. What are the facilities for distributing the gasoline that you principally rely on? A. Tank wagons, motor delivery. The drum shipments are out of date. 1011
People won't handle drums. You can't deliver gasoline in drums any more; people won't bother with them. There is a universal tank service everywhere from some one or other and you don't have to buy it in drums.

By Mr. Speer:

Q. You mentioned that the Standard Oil Company were operating in your territory. What Standard Oil Company do you mean? A. Of New Jersey.

Q. The Standard Oil Company of New York does not operate in your territory? A. Not direct. I see

some of the Standard Oil Company of New York labels on some of the barrels of stuff that the Standard of New Jersey ship out some times.

Q. Oh, well, that is on the barrels going through? A. Yes.

Q. So far as operating and marketing— A. No, I do not get into their territory, just the Standard Oil of New Jersey and the Atlantic Refining Company.

Q. What other company do you see? A. The Texas, the Gulf, the Ohio "C."

1013 By Mr. Hayes:

Q. Do you strike the Sinclair? A. No, sir.

By Mr. Speer:

Q. There is plenty of competition? A. Yes, the woods are full of them.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Are you in competition with the Atlantic Refining Company? A. Yes, sir.

Q. Did you say that your business as to gallonage has increased because of this practice of leasing and
1014 loaning equipments, or because of the general increase in demand on the part of the public? A. Mostly the increased consumption of gasoline.

Q. You do not attribute the increase of gallonage in your business to the leasing and loaning of oil tanks and pumps? A. No, sir, that is not the principal cause of the increase. That is only done in our instance to save fragments, to save what we have got.

Q. Why don't you enter into the agency agreements? A. We have not got unlimited money to put down tanks all over the country.

Q. You have some lease and loan agreements? A. Yes, we have a few.

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Q. Is there any reason why you prefer lease and loan agreements to the agency agreements? A. I cannot see any difference between the two. I may be a little dull of comprehension on that point, but I don't see where the difference is.

Q. Put it this way: Would you just as leave have a tank or pump installed with a retailer under an agency contract with the retailer as to install it under a lease agreement? A. The lease agreement is more satisfactory because he pays for the gasoline when it is put in his tank. Under the agency agreement he only pays for it when he puts it out through the motor, and 1016
he settles every Saturday night for the quantity he has sold during the week.

Q. Which involves less bookkeeping and sales troubles, the lease contract or the agency arrangement? A. The lease arrangement is less troublesome than the agency arrangement.

Q. Do you believe that if the lease agreements were interfered with and the oil companies were to quit leasing and loaning pumps, that there would be an equal amount of business done by agency agreements as is now done by lease and loan agreements? A. There are not any agency agreements that are made any more. That old commission proposition of a cent 1017
or two cents a gallon to the agent has been cut out. I don't know of any of those existing now. There are not any commission sales going. Every Standard Oil tank that I know of, it is on a straight out sale. They do not work the commission plan any more. It was done away with a year or two ago because it was unsatisfactory; it always caused a dispute between the purchaser and the seller.

Mr. Zechiel: That is all.

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By Mr. Speer:

Q. In other words the lease and loan method has superseded the agency system? A. Yes, sir.

Q. The agency system was in vogue before the lease and loan system was adopted? A. Yes, it has been done away with.

Q. But the Atlantic did have those agency contracts all through the territory? A. Yes, sir.

Q. But don't you say the lease and loan system is more satisfactory for many reasons? A. More

1019 satisfactory than the agency, yes, sir. You get paid for the gasoline when it goes into the man's tank.

By Mr. Zechiel:

Q. Did the Atlantic Refining Company, or any other oil company, ever have installed as many agency arrangements as there are now lease and loan arrangements? A. No, they have increased and multiplied. The old agency arrangement has been transferred to lease and loan.

Q. No; I am asking you whether if at any time the Atlantic ever had as many agency contracts, or any other oil company, with the retailers, as they now have lease and loan contracts.

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Mr. Speer: We object to that, because evidently it follows. The witness says the agency contract has been done away with and they are using this other system.

The Witness: No, the lease and loan business was the outcome of the agency contract. The pump was put in and the man was told he would get so much per gallon to sell the goods, to sell the gas.

Mr. Zechiel: I don't think the witness understands my question. Let me ask it this way.

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By Mr. Zechiel:

Q. Are there more lease and loan agreements in effect now than there were before the lease and loan agreements were adopted? A. Oh, yes, a great many more.

By Mr. Nesbitt:

Q. Has the lease and loan method brought competition into your territory? A. Yes, sir.

By Mr. Schekter:

Q. Do you know the proportion of sales made by the Atlantic Refining Company to leases and loans? I mean the proportion of sales of pump equipment? A. Indeed I could not tell about their business. 1022

Mr. Schekter: Mr. Examiner, may I ask whether the witness has stated any specific instances of complaint against the Atlantic Refining Company?

Examiner McCorkle: We could not go into that.

Mr. Schekter: You cannot go into that?

Examiner McCorkle: No.

Mr. Zechiel: As a matter of fact there have been no specific instances cited of that sort. 1023

Mr. Schekter: That is all, then.

(Witness excused.)

C. B. MATTHEWS was called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your full name? A. C. B. Matthews.

Q. Your address? A. 77 Main Street, Buffalo, N. Y.

Q. With what company are you connected? A. The Buffalo Refining Company and the Warren Oil Company of New York.

Q. What are your positions with those two companies? A. I have been for many years the president and manager of the Buffalo Refining Company, and in the other company I am simply a director. My son is the president of the Warren Company.

Q. How long have you been in the oil and gasoline business, in a general way? A. In the oil business in one way and another some forty years.

1025 Q. In the sale and distribution of gasoline and oil products generally, how long have you been in that phase of work? A. The oil products generally for about thirty-five or forty years; with the gasoline proposition not over eight or nine years.

Q. What is the general territorial extent of your business? I am speaking now of the Buffalo Refining Company? A. As far as gasoline goes I think we have nothing outside of New York State, except a little proposition in Canada, across the river.

Q. And in western New York? A. Yes, sir.

Q. In and about Buffalo? A. Well, we have stations from Buffalo east to Albany. We have about

1026 twenty stations.

Q. And the company of which you are a director, what is the territorial extent of its business? A. Principally New York, in gasoline.

Q. Do you do business in some states besides New York? A. We have recently bought a refinery in Illinois, and we have been doing business in fuel oil and other goods in quite a number of states.

Q. But not in gasoline? A. No, sir.

Q. In connection with your business do you handle oil tanks and pumps used in the distribution of gasoline products? A. Very little, indeed.

Q. How long have you been engaged in that phase of it? A. Not over three or four years.

Q. And in that respect do you sell such equipments? A. We have in a very small way.

Q. Do you lease or loan such equipment? A. No, sir, we have no arrangements of that kind with anybody.

Q. Have you ever had such lease arrangement with anybody? A. In a very small way up to within perhaps a year and a half or two years.

Q. You are acquainted with the leasing system, generally known as the leasing system of pumps where 1028
certain oil companies lease and loan such equipments for a nominal consideration, under an agreement or understanding that the user thereof shall not use in connection with the pumps gasoline products of any competitor or any other oil company except the party who leases such equipments? You are acquainted with that phase of the business? A. Certainly.

Mr. Schekter: I want to offer my objection to that, as being grossly leading, and not based upon the facts as they exist. I think the witness ought to be asked to testify and not be led.

Examiner McCorkle: Note the objection. Do not lead him any more than can be helped. 1029

By Mr. Zechiel:

Q. Go ahead? A. Will you repeat the question?

(The pending question was repeated by the stenographer as above recorded.)

A. I am.

Q. Has either of the companies with which you are connected ever lost business because of this business practice as indulged in by any of your competitors? A. We have.

Q. To what extent has that been true? A. Not to any very large extent.

Q. You mean that you have not lost much business because of that practice? A. Yes.

Q. Who are your competitors in your territory? A. Almost all the big concerns, beginning with the Standard, running through with the Texas, the Gulf, the Sinclair, most everybody in that territory that operates.

Q. Do you know whether these concerns you have named, any of them, use as a business method this
1031 leasing and loaning arrangement to which you have testified? A. Yes, sir, some of them have.

Q. What companies? A. Principally the Standard of New York.

Q. Do you know of any other companies? A. Not personally, no.

Q. In your experience, in connection with your business, do retailers of gasoline products in your territory have installed more than one such pump equipment in one place of business? A. I do not know of any.

Q. Where there is more than one? A. More than one.

1032 Q. Have you ever tried to sell your product to a garage where there is a lease and loan installation? A. Yes, sir, we have.

Q. Have you ever been successful along that line? A. No, sir, not in any permanent way. Some times they would buy of us if they were neglected and out of gasoline, from the parties that they had the contract with. I have in mind an operator in Buffalo that had an agreement of recent date with the Standard, and perhaps this was entered into not over three or four weeks ago. They began to supply him, and he was out of gasoline two days in succession, and he urged

them to supply him, and they did not find it convenient or in other words they found it more convenient to supply those stations which they operated directly, so that he was without gasoline, and he went right ahead and installed a plant of his own, a pump and tank, and he was sufficiently forehanded to go ahead and not be obligated to anybody that was going to tie him in that way and then neglect him after they got him tied.

Q. What was the occasion of your beginning the practice of leasing and loaning such equipments? A. It was to get into some places where the practice ob- 1034
tained by other companies.

Q. Do you mind explaining that a little more fully, your expression to get into places? A. We never did it except where parties were not fully satisfied with the treatment they had from the companies they were contracted with, and if we would loan them a tank they would buy of us. But we never had an agreement, however, binding anybody to buy exclusively from us. But there were places when we wanted to sell our lubricating goods and they did not feel as though they could buy of us the lubricating goods without we would see them through safely on the gasoline proposition. 1035

Q. Is it your experience or not that there is a ready market for lubricating products with retailers of gasoline who are under lease contracts with your competitors? A. My experience is that it is not the case.

Mr. Zechiel: That is all.

CROSS-EXAMINATION by Mr. Speer:

Q. You say you have a number of stations from Buffalo to Albany. What kind of stations are those? A. They are auto stations for filling autos. We own

them and pay the operator a salary, and he gives us daily reports of his operations.

Q. The operator is in reality your agent? A. Absolutely.

Q. Either on a commission or salary basis? A. Yes, one or the other; generally salary.

Q. How many of those stations have you along from Buffalo to Albany? A. Oh, we have some twenty.

Q. Are they expensive stations? A. Well, they have been profitable to us.

1037 Q. You own the property, I presume, the buildings? A. We either own the ground and the outfit, or the ground is leased and we own the outfit in every case.

Q. In a general way what do those stations cost you? I don't want to go into your busines particularly, but in a general way what do they cost? A. You mean the maintenance per month?

Q. No; I mean the first cost of the equipment, the fitting them up, putting in pumps, building the building, buying the property? A. From $500 to $1,500.

Q. Do you fit them up with pumping equipment? A. Yes.

Q. That itself would cost more than $500, would it

1038 not? A. Yes.

Q. Then you cannot have any station that cost only $500, can you? A. I think we have some places where they own the tanks themselves.

Q. Oh, the operator owns the tank? A. Yes; there may be some such cases.

Q. But still you have made him your agent, and he is operating and selling your gasoline? A. Yes.

Q. Do you sell your gasoline under a trade brand? A. Well, we try to.

Q. Well, you do? You use the name of some kind, do you not? A. Yes.

Q. Do you advertise it? A. Yes.

Q. And you so advertise at those stations of yours? A. Yes, sir.

Q. Take these main lines of travel, like from Buffalo to Albany, during the touring season a great many automobiles come along, do they not? A. Yes, sir.

Q. And is not a great part of the trade in gasoline, selling it to these automobiles that are touring the country? A. Yes, a great part of it is.

Q. As a matter of fact your business has increased of late years? A. Yes. 1040

Q. You speak of some of the retailers in connection with lubricating oil, that they were anxious to get some one to supply them with gasoline. As a matter of fact during war times, gasoline was a little scarce, was it not, and a retailer was glad to have some arrangement by which he could be insured of a supply? A. Yes, sir.

Mr. Speer: That is all.

By Mr. Schekter:

Q. Mr. Matthews, you say you are familiar with the practice of the oil companies to make arrangements for the leasing or loaning of this pumping equipment 1041 for a nominal consideration. Now, as a matter of fact have you ever asked to see the agreements under which the arrangement is actually made? A. Personally I never have, but my representatives, agents have.

Q. But I am confining my question to you personally, Mr. Matthews. You have never seen the agreements under which these arrangements have been consummated? A. I never have, no, sir.

Q. And you are testifying entirely from what other persons have told you, so far as you testify about what arrangement has been made? A. I am testifying what the men state that made the arrangements.

1042 *C. B. Mathews, Cross*

Q. That was from what other persons have told you and not from your inspection of the agreements? A. That is true.

Mr. Schekter: I move to strike out from the testimony of this witness all he has said about what he learned from the statements of other.

Examiner McCorkle: Note the objection.

By Mr. Schekter:

Q. Now, Mr. Matthews, you testified further that the dealers wanted to deal with somebody who would
1043 not neglect them when they had him tied. Just what do you mean by that statement? A. I mean that they failed to supply him when they were supplying their own stations.

Q. But what do you mean by the statement that they have him tied? A. That he had that contract with them, or agreement—I don't know that it was a written agreement, or simply an oral agreement—I don't know as to that.

Q. Don't you know that they have a perfect right under the agreement that they make with the oil company to install any other equipment and put in gasoline or other products of any other company from
1044 whom they may see fit?

Mr. Zechiel: The Commission objects, on the theory that the attorney for the Atlantic Refining Company is correct, that this gentleman does not know anything about those contracts, and therefore cannot answer the question.

Mr. Schekter: Therefore do I understand that the attorney for the Federal Trade Commission—

Examiner McCorkle: Argument off the record, Mr. Reporter.

(Argument off the record.)

Mr. Schekter: I press my question.

Mr. Zechiel: Oh, I don't object to it.

Examiner McCorkle: Read the question.

(The question was read, by the stenographer, as follows):

"Q. Don't you know that they have a perfect right under the agreement they make with the oil company to install any other equipment and put in gasoline or other products of any other company from whom they may see fit?" A. Personally I don't know but what they have that right. I only know what they do, what they say. 1046

By Mr. Schekter:

Q. As a matter of fact, irrespective of any tying clause or tying agreement, is it not true that a retail dealer who sells to consumers would have absolutely no right to sell through the pump of the Standard Oil Company of New York gasoline of any other refinery?

Mr. Zechiel: To which the Commission objects, as a conclusion of law. The witness is not at all qualified to answer. 1047

Mr. Schekter: If the Examiner please, this is as material a statement of fact as I can conceive pertinent to this issue.

Examiner McCorkle: What is the question?

(The pending question was repeated by the stenographer, as above recorded.)

Examiner McCorkle: That is a question that the witness cannot be expected to answer because he has said he had not seen any agreement.

Mr. Schekter: I mean now, irrespective of any agreement. My question is premised on that.

Examiner McCorkle: That is a matter of law, and the witness will not be required to answer that question.

By Mr. Schekter

Q. Mr. Matthews, if the Standard Oil Company of New York, or any other oil company, installs a pump and storage tank, a measuring device to Mr.
1049 John Jones, and labels the pump with its name, so that persons who seek to buy the product of the Standard of New York may know they are getting it, would you, or such retail dealer, attempt to sell to any purchaser the product of any other oil company through that pump? A. I would if the man operating the pump asked me to, I would sell him; but the trouble is he don't ask me (laughter).

Q. I am assuming you are the man operating the pump. You are referring now to the oil company. When you say the man operating the pump, to whom do you refer? A. I am referring to the man at the station. That is the agent, so to speak, of the party
1050 installing the pump.

Q. I am assuming, Matthews, in the illustration I am giving you, that you are the retail dealer, and a purchaser asks you for the product of the Standard Oil Company of New York, and you have on your premises a pumping equipment bearing the label of the Standard Oil Company of New York: would you, or is it your experience, that any other retail dealer does sell to such purchaser a product other than the product of the Standard of New York? A. I don't know that the question has ever been asked me.

Q. Now will you consider that it is asked you, and answer it in the light of your experience? A. If a responsible party wanted to buy gasoline of me I would sell it to him as a matter of principle and public policy.

Q. You would then undertake to sell him the product of the Warren Oil Company as the product of the Standard Oil Company of New York? A. I would not.

Q. No? A. I consider our product superior (laughter).

Q. Mr. Matthews, to be perfectly serious now, and 1052
to get a proper answer on the record, I want your statement as to whether a retail dealer will sell a purchaser the product of another oil company through a pump labeled as the product of the Atlantic Refining Company, we will say, and holding out to the public that any gasoline coming through that pump is the product of the Atlantic Refining Company?

Mr. Burdeau: I object to that as involving a subject not in issue.

Examiner McCorkle: The objection is sustained.

Mr. Schekter: I assume I may have an exception? 1053

Examiner McCorkle: Yes, note an exception.

By Mr. Schekter

Q. Irrespective of any tying agreements of any nature whatever, Mr. Matthews, is it your experience that a retail dealer will continue his business with a single oil company with whom he has established relations irrespective of any tying agreement so long as the arrangement continues satisfactory and the man's

credit continues good? That question is not too involved, is it? A. I don't quite understand.

Examiner McCorkle: Read it over.

(The pending question was repeated by the stenographer as above recorded.)

A. I still fail to grasp the idea there.

Q. Let me state it more concisely.

Examiner McCorkle: Explain it to him without putting it on the record.

1055 (Explanation off the record.)

A. I should think he would stick by the company with which he had the contract, if they supplied him properly, and if they did not I think he would buy the best he could and take the consequences.

Q. And if they did not then he would do what has been done in your experience, drop the oil company even though there was a tying agreement, and buy of you? A. Yes, sir.

Mr. Schekter: That is all.

By Mr. Speer:

1056 Q. Is it not a fact there are more companies operating in your territory now than there were a few years ago? A. Yes, sir; in a large way.

Q. So that competition has increased of late years? A. Yes, sir.

Q. Don't you think this method, this system, of leasing and loaning pumps has had something to do with increasing the number of companies that are operating? A. I hardly think so. The increase I consider—that is, in the quantity of gasoline sold—due to the desire of the big companies to cover the whole field. Those that were only operating locally and those that were only operating in other things

have pushed into gasoline and got next to the consumer.

Q. The big companies are trying to reach the consumer? A. That is it.

Q. And they do it by this method? A. The biggest ones that I know own the equipment, and they use this loaning business to hitch in fellows that they could not get otherwise.

Mr. Speer: That is all.

RE-DIRECT EXAMINATION by Mr. Zechiel: 1058

Q. I want to ask you, Mr. Matthews, just one question. Referring to the statement you made on cross-examination, in answer to a question by counsel for the Atlantic Refining Company, with respect to the readiness of retailers of gasoline, who are buying from a company, to jump from one company to another, do I understand it to be your position that a retailer of gasoline would as readily jump from one company to another if he were under no contract for the lease or loan of a pump, as if he were under such a contract of lease and loan? A. I think he would more readily do it if he was under no contract.

1059

By Mr. Schekter

Q. Why would that be, Mr. Matthews? Why do you say that? A. I say that because he is free-handed to buy where he chooses.

Q. Is not he under the lease and loan agreement? A. No, sir; he is not.

Q. Have you seen the agreement?

Mr. Zechiel: I object to that question.

Mr. Hayes: It is perfectly proper there.

Mr. Zechiel: He has been over the whole thing.

Mr. Schekter: It is directly in answer to the statement to you.

Examiner McCorkle: The witness has said that he has not seen any contract, and you are attempting to examine him about something he has never seen.

Mr. Schekter: I desire this taken in support of my question. The witness has stated on re-direct examination—

Mr. Zechiel: Mr. Examiner, can't we proceed?

Mr. Schekter: The witness has stated on re-direct examination that the retail dealer does not jump as readily when there is a contract of lease and loan as when there is not, and his reason for that is because he is not able to jump when he has a lease and loan agreement. Now in order to rebut that statement I want to show either that there is no such provision in the lease and loan agreement, if the witness knows, or if he does not know, that ought to appear of record, so as to attack the correctness and accuracy of his statement on re-direct examination.

Examiner McCorkle: The witness answered the question on the assumption that those agreements were tying contracts, but he said he did not know anything about it.

Mr. Schekter: I will phrase my question this way.

By Mr. Schekter:

Q. Mr. Matthews, if as a matter of fact there is nothing in the agreement which ties the man down so as to prevent him contracting elsewhere, the reason which you have given fails, does it not?

1063

Mr. Zechiel: To which the Commission objects, because there is no evidence, and never will be any evidence in this case, that that is the fact about these contracts. These contracts are made a part of the Atlantic Refining Company's answer, and the contracts themselves, in the answer filed in this case, will not support that question.

Mr. Speer: On cross-examination you have a right to ask anything you please.

Mr. Zechiel: I do not see any reason to go outside of the facts of the case.

1064

The Witness: I would say further, if you will permit me.

Mr. Schekter: I don't want any further statement. I want an answer to my question, unless it is ruled out.

Examiner McCorkle: Go ahead and answer.

The Witness: The jumping depends very largely on the man's ability to take care of himself, when he gets acquainted with the business. If he has not any ability to obtain tanks and other things, he probably will hang on where he is.

1065

By Mr. Schekter:

Q. And that is true whether there is a tying agreement or not? I say, that is true either way? A. I don't think so.

Q. Then, again, I want your reason. A. I think a man who enters into a contract generally enters into it from good motives and personal interest, and if he finds that in operating it is not to his personal interest, he will get away from the contract in one way or another.

Mr. Schekter: Why, of course. That is all.
Mr. Zechiel: That is all.
(Witness excused.)

P. C. HUBBARD, was called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your address? A. Bradford, Pennsyl-
1067 vania.

Q. With what company are you associated? A. The Kendall Refining Company.

Q. What is your relation with that company? A. Secretary and treasurer.

Q. How long have you been associated with that company? A. Between ten and eleven years.

Q. Have you had a general experience in the gasoline and oil business prior to that time? A. No.

Q. Since you have been with that company in what capacity or capacities have you been employed? A. More particularly with the sales and finances.

Q. Have you ever had occasion to travel about over
1068 the territory, over which you sell your product? A. Yes.

Q. Has that been a common experience of yours? A. Yes.

Q. What is the general geographical territory in which your company does business? A. We do a large barrel trade out of Bradford, in practically all of New York State, a portion of Pennsylvania, and we have a large distributing system in Hartford, Connecticut—but we only handle lubricating oils down there. We have a tank truck of gasoline and kerosene at Bradford, Pennsylvania, and we have that service at Buffalo, Dunkirk and Lockport, New York.

Q. Out of Bradford your business is wholly within the State of Pennsylvania? A. No, we distribute direct from Pennsylvania in barrels and drums.

Q. No. In your Bradford territory you say you distribute in tank wagons around Bradford? A. Yes.

Q. And all that distribution is within the State of Pennsylvania? A. Absolutely.

Q. In connection with your business in the sale and distribution of gasoline and other refined oil products, do you also handle pumps and tanks? A. We do.

Q. Do you sell such equipments? A. Very rarely.

Q. Do you lease or loan such equipments? A. We 1070
loan them.

Q. What are the conditions under which you are engaged in that kind of business? A. That the customer handle Kendall gasoline in that pump and tank.

Q. How long have you been engaged in the pump business in any capacity? A. Approximately three years.

Q. And during that time you have both sold, and leased and loaned? A. We have sold in this sense, that if a dealer wanted Kendall gasoline we would buy the pump for him, giving him the benefit of the refiner's price. The pump companies usually allow the refiners about 20 per cent discount, and we would 1071
buy it. We would not make a profit on the equipment.

Q. But you did that sort of business, you say? A. Well, we have sold them for possibly five years but we have not leased equipments for over three years

Q. You never sold your equipments for a reasonable profit on the transaction? A. No.

Q. Always at cost? A. Yes.

Q. What was the occasion of your entering onto the leasing and loaning practice in your business? A. We are engaged in the oil business in Buffalo, and

it was a case of either doing that or losing the business.

Q. Will you explain more completely what you mean? A. A customer handling Kendall gasoline would come to us and say, "Now, here, the Standard (or one of the others; I am referring to the Standard of New York) they have agreed to put me in an equipment. If you want to follow suit we prefer your product. Should you do the same we will continue, but if not you need not come around any more." We stood pat for a while, until we saw it
1073 was too costly, we were losing too much business.

Q. By "standing pat" you mean what? A. We refused to put in equipment, but we found that was too costly, since we were losing business, and we followed suit and installed equipment to retain business, to retain our established business.

Q. To what extent have you lost the business because of that system of lease and loan? A. Not to a very great extent. We would always weigh the facts in each case, and if a customer's business was small we would not go to the expense of putting in the equipment, but we would let one of our competitors have that business.

1074 Q. Do you also deal in lubricants? A. Yes.

Q. Have you ever lost any lubricant business because of this lease and loan arrangement practiced by competitors? A. I don't think so.

Q. In your territory do garage people and other retailers of gasoline generally have more than one installation of such equipment? A. Just one.

Q. Would you say it is rare or otherwise that they have more than one? A. Real large dispensers of gasoline generally have more than one.

Q. Where they have more than one, are such equipments under lease or loan agreements? A. Mostly lease and loan.

1075

Q. Where they are under lease and loan, are they leases and loans from different companies or from the same company? A. Ordinarily from the same company.

Q. Would you say then it is a rare occasion in your experience in your territory for one retailer of gasoline to have installed at the same time such equipments and sell to them the gasoline of different oil companies at the same time? A. It is the exception.

Q. Who are your competitors? A. Principally the Standard Oil Company of New York, Sinclair, Elmer E. Harris, Peas Oil Company, Upson & Ster- 1076
ling—that is in New York. In Bradford, Pennsylvania, the only competitor is the Atlantic Refining Company.

Q. So far as you know do all of these competitors practice this same form, this lease agreement? A. Yes.

Mr. Schekter: At this point, Mr. Examiner, I will ask to again press my objection. If the witness has not seen the agreements, I do not think he is qualified to answer the question.

Examiner McCorkle: Note the objection; the witness may proceed.

1077

Mr. Schekter: May I ask whether the witness has seen the contracts, a preliminary to the objection?

Mr. Zechiel: Go as far as you like.

Examiner McCorkle: When counsel gets through, you can bring it out.

By Mr. Zechiel:

Q. Answer the question. A. What is the question?

(The pending question was read by the stenographer, as above recorded.)

1078 *P. C. Hubbard, Direct*

A. Yes.

Q. From your experience, Mr. Hubbard, in the conduct of your business in your territory, do you think that the leasing or loaning of oil tanks and pumps for a nominal consideration, under the agreement or understanding that the lessee thereof, or the party receiving the equipment, shall not use, through such equipment, the products of any other company than that installing the equipment or leasing the equipment, is a sound business practice?

1079 Mr. Speer: The question is objected to as incompetent, immaterial and irrelevant.

Examiner McCorkle: Note the objection. The witness may proceed.

A. I think it is a vicious practice.

By Mr. Zechiel:

Q. Why do you make the answer as you do? A. May I answer that by giving an illustration?

Q. I should think so, Mr. Examiner.

Examiner McCorkle: Proceed.

The Witness: There is a garage about 3,000 feet, I should say, of the refinery—this is at Bradford. We
1080 do not retail gasoline from the refinery; we are not equipped to and do not care to do it. This garage is a new building, a new place. They came to us and said they wanted to handle Kendall stuff. We were only too pleased to have them do so. They had a small equipment of their own. They put it up to us that if they were going to continue to handle Kendall gasoline that we would have to put in a pump, which we did. The Atlantic Refining Company had a pump, I would say, not over 200 feet from this location. Our pump was in this place I should say less than a month before the Atlantic had one plastered in alongside of it.

Now, that is not sound business, in my estimation. The Atlantic have a pump in one of the largest garages in Bradford, and the owner has been to us repeatedly asking for one of our equipment. Well, we won't put it in.

Mr. Zechiel: That is all.

CROSS-EXAMINATION by Mr. Speer:

Q. The effect of the case which you have mentioned, Mr. Hubbard, is to make competition right in that garage between your gasoline and the gasoline 1082
of the Atlantic Refining Company, so that the automobile man can take which he chooses; that is the effect of it. A. The effect is that he can take whichever gasoline he wishes.

Q. And if you would put yours in uptown where the Atlantic has one, and where they are asking you to put one in, it would make competition in that garage between you and the Atlantic people, would it not? A. It would.

Q. But you refuse to go in and compete? A. We refuse because there would not be enough business left over. This garage uptown has two pumps, and his business would not warrant a third one. 1083

Q. That is your opinion? A. That is just my personal opinion. And this other garage I cited is a comparatively small garage. That is why I say the practice is vicious.

Q. Don't you think, Mr. Hubbard, that there is too much competition and too much fighting for business? A. No.

Q. You concede that is a good thing? A. Oh, yes, I believe in it absolutely.

Q. Is it not a fact that the competition in your territory is increasing of late years? A. Yes, sir.

Q. There are more companies engaged in the business? A. Yes, sir.

Q. Don't you believe that this system of leasing and loaning pumps is enabling companies to come in and get a foothold which otherwise they would not be able to do? A. I would say it was a good lazy man's way of getting business, yes.

Q. It is good business? A. We have gotten the business without doing it.

Q. Well, you have a particularly good grade of gasoline in your local territory where it is well known.
1085 If you can get it to the public as yours they will buy it, will they not? A. You bet.

Q. Now a new man comes in and wants to build up a business. He has got to get his product to the public under some name in order to get the business. Is that a fact? A. Surely.

Q. And is not this the easiest way he can get to the public and the cheapest way, so as to sell his product under his name? A. I would say the easiest but not the least expensive.

Q. What would be a less expensive method? A. He would have to sell in equality. That would be quite a salesmanship proposition.

1086 Q. I am asking what method. You say this is not the least expensive. A. The practice that we followed in establishing our trade in Buffalo was to go to the garages, and we said, "Here, it is true the Standard will put in equipments, these other fellows, but our stuff is straight Pennsylvania gasoline and the quality would warrant you handling our stuff—the demand after it is once established. I would like to fill up your tank once or twice, or even fill your car (if it happened to be a leased place) and let you try the gasoline yourself. After you try it I think you will be willing to handle Kendall gasoline." I

don't know how a person would start with an inferior product without making some attempt to offer it either in price or elaborate equipment.

Q. If he did that and used a name and sold an inferior article the public would soon quit buying it, would they not? A. If they followed it up with elaborate advertising, not necessarily so.

Q. You think that a man that has a trade brand under which he is selling to the public will help his business by selling an inferior article under that name, and thus cause it to have a bad reputation? A. If he has not got any other article to sell what is he 1088
going to do.

Q. If it is a bad article and it becomes known under that name you are getting an inferior gasoline, the name is not going to help the sale of it much, is it? A. If it becomes well known?

Q. Yes. A. Of course if it is known an article is inferior that is no boost to it, but by clever advertising you may be able to put it over.

Q. You may be able to get a man to buy it once. A. Oh, no; we have not got all the business in Buffalo.

Q. Do you make the only good gasoline that is on the market? A. No, I don't think so. 1089

Mr. Speer: That is all.

By Mr. Nesbitt:

Q. Mr. Hubbard, in this garage that you are referring to, in Warren or Bradford— A. Bradford.

Q. Where you refused to make an installation, if you had thought it a profitable investment you would have made the installation, would you not? A. Oh, we aim—

Q. Just yes or no. A. If it was profitable, you say?

Q. If you thought it was a profitable proposition you would have made the installation, would you not? A. Well, I cannot say that we would.

Q. Why would you not? You would or would not have made it. A. I will say no.

Q. Why not? A. Because Kendall gasoline—we advertise that these different garages are handling Kendall gasoline. It is possible that the garage might use the Atlantic's, or some competitor's. We like a person to go to a garage up there and get Kendall gasoline.

1091 Q. Then you would not have thought it a profitable business proposition to make the installation; otherwise you would make it. Is not that the real answer? A. No, not necessarily.

Q. As a business proposition your company does not want to sell in a garage where there is another gasoline being sold; that is true, is it not? A. That is true.

Q. And you do not regard it as profitable business to make an installation of your gasoline in a garage where there is an installation for another gasoline? A. Oh, no.

Q. No? A. Not necessarily at all.

Q. I am not clear yet, Mr. Hubbard, as to why
1092 you would not make that installation in the garage in Bradford if you had thought it a profitable investment to do it. A. As I say, we advertise the Kendall gasoline can be obtained at certain garages and we do not care about the garage handling some other make of gasoline. If they want to handle Atlantic, let them handle it.

Q. But it was not a profitable business proposition for you to make that installation; is not that true? That is, you regarded it as such? A. In this first case, yes. I am referring to the small garage where there are two installations.

Q. In other words, you want to be in the garage, to have your installation in the garage, and your gasoline to be used in a garage, where no other gasoline is being handled. That is what you prefer? A. Yes.

Q. And you are advertising that garage as having your gasoline and no other person's gasoline? A. Oh, no, we do not advertise that.

Q. You do not advertise your gasoline at all? A. We advertise our gasoline as being sold at the following garages.

Q. And you try in every way to identify your name 1094
with your product, don't you? A. Yes.

Q. And bring it in as close connection with the product as you can? A. Yes. If a person wants Kendall gasoline we want them to get Kendall gasoline.

Q. What do you mean when you say you think this practice of loan and lease agreement at a nominal rental is a vicious practice? What do you mean by vicious? A. Wasteful. Here is the Atlantic with an installation 200 feet away. We put in a pump equipment which is ample to take care of this business, and the Atlantic comes along and puts in a second pump. It is a close proposition whether it would be profitable 1095
even with one pump. If I had known that second pump was going in I never would have gone in with the first one.

Q. If you had a grocery store on one corner and I opened one on the other corner, would that be a vicious practice? A. If you owned both pumps.

Q. If you owned one on one corner and I opened a grocery store on the other, would that be a vicious practice? A. In a sense, yes. By making the dealer buy his own equipment he is going to be satisfied with

his equipment, is going to be before he puts it in. In this way he does not have to use any judgment. You come along and say, "I want to put in equipment. Kendall has one across the street and I want to put in one here." It does not cost him anything, and the tendency is for him to tell you to go to it.

Q. That is all.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Mr. Hubbard, your company would not refuse
1097 to sell gasoline to a man who had installed his own equipment even if he had two or three equipments and was using one kind of gasoline in one and one in another? A. Absolutely not.

Q. You sell to anybody you can sell to? A. Yes.

Q. Your only objection is to installing equipments where other people have installations? A. Yes, sir.

Q. And you do not ever do that, do you, if you can avoid it? A. If we can possibly avoid it we do not install equipments.

Q. From your experience is that the general practice of your competitors, that they do not install where you or some one else has an installation? A. The
1098 vast majority of our equipments are installed in Buffalo, and there is an ordinance there now that will permit only so many equipments in one block, so that covers that.

Q. Speaking of the Atlantic Refining territory—A. There is no restriction in Bradford.

Q. What is the fact there, whether or not the installations are duplicated by the same companies? A. There are only two companies there that follow that practice. That is the Atlantic and Kendall, and we only have, I think, about two equipments there.

Q. So that duplication is a rare thing? A. Yes.

Q. And in fact is not the very purpose of these contracts to control the business of the company, the retailer, with whom you put in your leased equipment, to such an extent that if you did not think you could control his business by placing such an equipment under such a contract, you would not place the equipment at all? A. Yes.

Mr. Zechiel: That is all.

RE-CROSS EXAMINATION by Mr. Schekter:

Q. Mr. Hubbard, if the Atlantic Refining Company wanted the patrons of the particular garage where you had installed your equipment to have an opportunity of purchasing its product right there at the garage, the only effective and economic way by which that could be done was by installing equipment there, was it not? A. Yes.

Q. And it had to do that by putting in equipment under its own trade name so that its product could be served through that equipment? A. Yes. My objection is planting them so close together.

Mr. Schekter: That is all.

(Witness excused.)

GEORGE N. ROOS was called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. Your name is what? A. George N. Roos.

Q. And your address? A. Georgetown, Pennsylvania.

Q. With what concern are you connected? A. The S. F. Bowser Company.

Q. In what business? A. Selling gasoline tanks and oil storage devices.

Q. Where are the headquarters of your company? A. Ft. Wayne, Indiana.

Q. How do you conduct your business in a general way? How do you handle your trade? A. I am a local representative for the Bowser Company. I have a certain district in which I am the sales agent.

Q. How do you conduct your own business? A. My own business?

1103 Q. Yes. A. In selling to the garages, stores and factories, as to selling tanks and pumps for the handling of oil.

Q. Do you take orders for gasoline pump equipments? A. Yes, I take orders, and those orders are shipped from the factory in Ft. Wayne, Indiana.

Q. You mean the orders are filled directly from the factory? A. Yes, and the goods are shipped from the factory.

Q. The goods are shipped from the factory at Ft. Wayne to your various customers in Pennsylvania? A. Yes.

Q. You have occasion, do you, in the course of your business to travel about over the country in which

1104 you do business, for the Bowser people? A. Yes.

Q. What, in a general way, is that geographic territory? A. My territory consists of Cambria, Blair, Center and Clearfield Counties in Pennsylvania.

Q. That is in and about what? A. That is around Johnstown, Altoona, DuBois and Bellefonte.

Q. What is your experience with respect to the distribution of oil tanks and pumps? Do garages generally in your territory have under installation more than one such equipment? A. In a very small percentage of the cases they have two pumps; mostly only one.

Q. Are you acquainted with the method of doing business of the oil companies with respect to pumps in that territory? A. Yes.

Q. What is their method? A. In my own territory there is only one large refining company that operates; that is the Atlantic Refining Company. That company is the only company that to my knowledge installs the equipment for customers.

Q. What equipment is installed by that company? A. The Gilbert & Barker equipment, made in Massachusetts.

1106

Q. Do you know of your own personal knowledge how such installations are made in your territory, what agreements or understandings are made in connection with the installation? A. Only by verbal information.

Q. And where did you receive this information? A. From prospective customers.

Q. What is the occasion under which you get such information? A. One special case, S. F. Crilly, in Altoona, wanted an installation—

Mr. Schekter: No, that is not the question, Mr. Witness. Will you repeat the question, Mr. Stenographer?

1107

(The pending question was repeated by the stenographer, as above recorded.)

By Mr. Zechiel:

Q. Under what circumstances generally do you get your information along that line? A. Directly from the customer.

Q. And what are the circumstances? A. Personal talk with the customer.

Q. Concerning what? A. Concerning equipment, concerning the buying and selling to him of the equipment.

1108 *George N. Roos, Direct*

Q. Do you recollect particular cases of this sort? A. Yes.

Q. You may state them.

Mr. Schekter: Objected to insofar as they are stated as information derived—

Mr. Zechiel: Wait until we get to it.

Examiner McCorkle: Go ahead and let the witness proceed.

The Witness: I called on Mr. Crilly in Altoona relative to pumps and tanks. He had purchased tanks
1109 and I wanted to sell him pumps. He says, "No, Mr. Roos, I cannot give you an order for pumps because the Atlantic Refining Company are going to give me two pumps for nothing," and he said, "I would be a d-a-m-n f-o-o-l not to take them."

Q. Any other instances? A. Mr. Cherry, in the same town, who opened a garage in Altoona, told me that they were giving him two pumps for a very small rental. I do not recall the rental, but it was either $4 or $8 a year.

Mr. Schekter: May it be understood that I need not repeat my objection to each one of
1110 these instances?

Mr. Zechiel: You can have objections to all of them. Go ahead.

The Witness: I also want to say, in regard to the Crilly situation, that in his business the gasoline business did not appear satisfactory, and the Atlantic Refining Company took out the pumps, and in the Cherry garage they were also removed.

By Mr. Zechiel:

Q. I did not understand you. A. In the last instance, Cherry, they were also taken away, again.

Q. Do you recall any other specific instances? A. None that I have personal knowledge of.

Q. Do you know as a matter of fact whether your experience in these cases has been the general experience in the conduct of your business in your territory with respect to the installation of pumps? A. No. I only know of these two separate cases where I can state anything definite.

Mr. Zechiel: That is all.

Thereupon, at 12:30 o'clock, P. M., a recess was taken until 1:45 o'clock P. M.

After recess.

The hearing was resumed at 1:45 o'clock, P. M., pursuant to the taking of recess.

GEORGE N. ROOS resumed the stand, and having been previously sworn, testified as follows:

Cross-examination by Mr. Schekter:

Q. You say, Mr. Roos, that the Atlantic Refining Company installs Gilbert & Barker equipment exclusively? A. As far as I know.

Q. Do you know that the Atlantic Refining Company buys pumps and this equipment from the Bowser Company, too? A. No.

Q. You don't know? A. No.

Q. You don't know that that is not so? A. No.

Q. You don't know that that is not so; you simply have no knowledge on the subject? A. I have no knowledge about it.

Mr. Schekter: That is all.

(Witness excused.)

1114 GERRY W. LEWIS was called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. Your name is what? A. Gerry W. Lewis.

Q. What is your address? A. Washington, D. C., 206 Evans Building.

Q. With what concern are you associated? A. S. F. Bowser & Company.

Q. What is your position with that company? A. I am a local salesman. That is, I sell exclusively in
1115 certain territory.

Q. What is your territory? A. I have seven counties in Maryland.

Q. What is the general product that your company handles? A. Gasoline and oil storage equipment.

Q. You say you are exclusively in the District of Columbia? A. No, sir; I have several counties in Maryland. This is where I make my headquarters.

Q. You do no business at all within the District? A. No, sir.

Q. What portion of Maryland generally? A. I have Prince George, Charles, St. Marys, Calvert, Montgomery, Anne Arundel and Howard.

1116 Q. They are near what? A. They are south of here and just north of the city; east, south and north of the City of Washington.

Q. Oh, yes. How long have you been with your concern? A. In this position I have been with them since the first of this year. I have been with the firm, though, on two occasions, once in 1912, then in 1918 and 1919. In this territory I have been in this work just this year.

Q. You heard Mr. Roos testify this morning, did you? A. Yes, sir.

Q. So far as the general method of doing business, both yours and on behalf of your company, do you conduct your business similar to the way in which Mr. Roos conducts his business? A. Yes, sir.

Q. In connection with your business you have occasion to travel about over your whole territory, do you? A. Yes, sir.

Q. Who are the customers generally to whom you sell your equipment? A. Garages, general stores, different kinds of stores; any one who may be interested, whom I think I can interest.

Q. General retailers of gasoline? A. Yes, sir.

Q. What is your experience over your territory? Do retailers of gasoline generally have more than one such equipment installed in the same place? A. Not generally.

Q. Where there are two or more of such equipments installed, are they equipments through which such retailers sell more than one kind of gasoline at the same time? A. I don't know of a single case in my territory where that is true. I know of several cases where they have two pumps, but I think they use the same gasoline in both pumps.

Q. Are you acquainted with the system which is practiced by some of the oil companies of leasing and loaning equipment to retailers of gasoline? A. Yes, sir.

Q. Have you in your experience lost customers or prospective customers because of this system of leasing and loaning pumps? A. Yes, sir.

Q. Describe more in detail your experience in that respect? A. Of course it will not be possible for me to give every instance but there have been a number of cases where these men have told me that they would have purchased had it not been for the fact that they were going to be given an outfit.

1120 *Gerry W. Lewis, Direct*

Mr. Schekter: That is taken subject to our objection, I take it, as hearsay evidence.

The Witness: I have in mind several cases where that occurred.

By Mr. Zechiel:

Q. Under what circumstances were those conversations had? A. It was always at the time I went to see them to try to sell them equipment.

Q. That they made these statements to you? A. Yes, sir.

1121 Q. Has that been a frequent experience in your business, or not? A. That is comparative, of course, but I would say it was frequent. There have been quite a number of outfits put in my territory on a lease or loan arrangement.

Q. Would you say that that has been a more frequent experience say in the last six months than prior to that time? A. I should say it has been equally frequent all during the year I have been on this territory. I do not think it has been any more frequent in the last part of the year than the early part.

Q. What makes of pumps are installed in your
1122 territory under lease and loan agreements, if you know? A. The Gilbert & Barker, I believe the American, and I think in some cases the Pennsylvania, and in some cases the Bowser.

Q. Do you know what oil companies install these various makes? A. I know who installs the Gilbert & Barker, the Standard Oil Company. The American pump is installed by the American Oil Company. Now, I want to be accurate; I am not certain that the American pumps are put in on a lease agreement. I seem to remember that I was told that they were, by one of the men I approached, but my recollection is not very

clear about that. I don't know who puts in the Pennsylvania. In that case, too, I must specify that I don't believe any of those pumps have been put in since I have been on the territory, but I do r call two instances that I was told they had been put in or loaned, but by whom I have forgotten. The Bowser has been put in by the Gulf and Texas.

Q. If you know, about what per cent of the installations in your territory have been placed under l·ase and loan agreements? A. You mean other than the ones I saw?

Q. No, I mean of the total installations? A. I 1124
don't quite understand your question. You mean of all pumps that go in my territory, whether they are sold by me or by competitors?

Q. Yes. I will have the question read to you, and you can see if it is not clear.

(The stenographer read as follows):

"Q. If you know, about what per cent of the installations in your territory have been placed under lease and loan agreements?"

Q. The installations? A. I am afraid I could not estimate that. I would not like to venture—of course 1125
I know it is not fifty per cent; it is less than that, but how much I don't know.

Q. You mean that less than fifty per cent have been installed under lease and loan agreements? A. As nearly as I can come to it I should say so, yes, sir.

Q. In these instances to which you have testified where you visited various retailers of gasoline for the purpose of selling them equipment and you were informed that such equipment would be furnished by oil companies, do you know whether or not in those in-

1126 *Gerry W. Lewis, Cross*

stances such equipments were furnished? A. I know of some cases that they were, yes, sir.

Q. Do you know who furnished them in those cases? A. Yes, sir.

Q. You may state it? A. A case in Rockville, W. C. Bean opened a garage. I sold him his lubricating equipment, tanks for lubricating oil, and he told me then that he was going to give me an order for a five gallon stroke pump, if he was not able to get one from the Standard Oil Company, but he thought they were going to give him one, and they did.

1127 Q. Without going into detail at the present time as to just who they were, if you can, state in a general way in your answer to my question without specifically enumerating the various places, who furnished the equipment? A. The Standard Oil Company, the Gulf Company and the Texas Company.

Mr. Zechiel: That is all.

CROSS-EXAMINATION by Mr. Speer:

Q. Do you sell your pumps and equipment to the oil company? A. No, sir.

1128 Q. You would not sell one of them to an oil company that wished to lease and loan? A. I would sell them to an oil company if I could.

Q. Do you sell to the retailer for sale again? A. No, sir.

Q. A sales agent, such as you are, is expected to sell only to the man who is going to use the pump himself? A. Yes, sir, or sell to the consumer.

Q. You do not sell to a retailer? A. To a jobber, no, sir.

Q. You do not on that account make any effort to sell to the oil companies in large quantities? A. No, sir, I do not.

Q. Some of the companies that are competing in your territory do use your pumps? A. Yes, sir.

Q. Under these lease and loan agreements? A. Yes, sir.

Q. What companies use your pumps? A. The Gulf and the Texas.

Q. They have been competing in your territory of recent years? A. Yes, in the northern part of my territory they are in active competition.

Q. And they are installing quite a few pumps, are they not? A. Not very many. I believe there are only three cases in my territory.

Q. The pumps that they do install, are your pumps? A. Yes, sir.

Q. And that is the way they are doing business, is it not, by leasing and loaning equipment? A. You mean that is the way the Texas and the Gulf Companies are doing business?

Q. Yes. A. Well, they do business that way and they do business without leasing and loaning pumps.

Q. These pumps of your company which they lease and loan they buy direct from your company, not through you? A. I have never had an order pass through me, no, sir.

Q. They buy them, as you understand, direct from the company? A. From the company. From what office, I don't know.

Q. Probably at wholesale rates. A. I don't know just exactly the arrangements with the oil companies.

Q. Well, they do not buy them through you, anyhow? A. No, sir.

Q. So far as they buy pumps from your company and install them that gives your company the business, although you don't get it? A. Yes, that gives us the business.

Mr. Speer: That is all.

Mr. Zechiel: That is all as far as I am concerned.

(Witness excused.)

J. S. WALSH was called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

133 Q. What is your name? A. J. S. Walsh.

Q. And your address? A. Parkersburg, West Virginia.

Q. With what concern are you associated? A. S. F. Bowser & Company.

Q. Where is the territory over which you engage in business? A. In Charl ston, West Virginia, and the surrounding territories, including Parkersburg, West Virginia.

Q. You heard Mr. Roos testify this morning, did you, Mr. Walsh? A. Yes, sir.

Q. Do you conduct your business for yourself and your company substantially as he testified to this morn-
134 ing? A. Yes, sir.

Q. In connection with that business you have occasion to travel about over the territory and come in contact with retailers of gasoline, do you? A. Yes, sir.

Q. What is your experience in your territory? Do retailers of gasoline generally have installed mor than one such equipment? A. Generally speaking it is really a one-pump proposition. There are instances, of course, where there are two or more, but generally speaking, one.

Q. In these instances where there are two or more, are such installations used in connection with the sale and distribution of more than one make of gasoline? A. Not to my knowledge. It is usually either the same or of the same quality, except one is what they call high or low grade of gas.

Q. But furnished by the same oil company? A. So far as I know it would be supplied from the same source.

Q. Who are the oil companies who are engaged in business in the territory in which you work? A. We have the Standard Oil Company of New Jersey, 1136
as I understand it, the Indian Refining Company; I think the National does some business in our section, in some lines.

Q. The National Petroleum Company? A. The National Refining Company.

Q. Refining company? A. Yes, sir. Those are the principal sources of supply. Then there is the Elk Refining Company, which is a local company, along with a number of other small local companies that supply locally.

Q. Are you acquainted with the general practice of leasing and loaning such equipments to the garage trade and other retailers? A. To the same extent as 1137
has been stated before; we have the same thing in our territory to contend with as I hear of in other territories. Pumps are installed as I understand it under an agreement of that kind.

Q. Have you ever lost any customers or prospective customers because of this practice? A. I have to the extent of being promised absolutely the purchase of our equipment at practically a fixed date, at which time I would be advised that they were sorry they could not give me the business, from the fact that they were

1138 *J. S. Walsh, Cross*

going to be furnished the equipment without any cost whatever.

Q. And their conversations in that respect were had at the time you were attempting to negotiate your sale? A. Yes, sir, in a number of instances.

Q. Would you say you had lost a considerable or a small amount of business by that practice? A. In a way I would consider it considerable. It would be with me at least in my volume of business.

Q. What pumps have been installed under lease and loan agreement? A. So far as I know there is none
1139 installed other than that of the Standard Oil Company.

Q. And that is what make of pump? A. G. & B.—Gilbert & Barker.

Mr. Zechiel: That is all.

CROSS-EXAMINATION by Mr. Speer:

Q. Do not any of the other companies that you have mentioned, the Elk Company, or any of the others, lease and loan pumps? A. Not to my knowledge, no, sir.

1140 Q. They may be doing it, however? A. If they are I have never heard of it.

Q. What other pumps are in use there? A. In my territory you have reference to?

Q. Yes. A. There are such a variety of them it would take quite a number to mention all. But the principal pumps are the Bowser pump, Gilbert & Barker, the Milwauka.

Q. Your business generally has been increasing in the last two or three years? A. Yes, sir, my business has increased some.

Q. You don't sell pumps to dealers for resale? A. No, sir, not with that understanding.

Q. You say that so far as you know garages with more than one pump never handle but one make of gasoline. There may be cases in your district where it is otherwise? A. I have reference to that question in this way: In a few instances they have put in two pumps to accommodate the demand for the service, or speed, in which cases the gas would probably be the same quality. In another instance or two they are using what we call a high pressure and a regular refined or standard grade of gas.

Q. There may be cases where they have different gasoline, a different make of gasoline, served from 1142
these different pumps? There may be such cases in your district? A. You mean from different refineries?

Q. Yes. A. It is possible, but not to my knowledge, though.

Q. Does the Atlantic Refining Company sell its gasoline in your district under a trade name or brand? A. Not that I know of.

Q. Don't they use any trade-mark? A. The Atlantic Refining Company so far as I know are not doing any business in my immediate territory.

Q. Oh. It is the Standard of New Jersey. I beg your pardon. A. As far as I know.

Q. Do they sell gasoline under a trade-mark or 1143
brand? A. The Standard Company?

Q. Yes. A. The trade-mark that I see on the pumps installed seems to be "Standard Gasoline." There is a sign to that effect.

Q. That is the name they use, the New Jersey Company? A. Yes, sir, as I understand it.

Q. Does the Elk Refining Company use a name for its gasoline? A. Not that I know of.

Q. You don't know of any other company then that has a name under which it sells its gasoline? A. The National Refining Company's gasoline is sold un-

1144 *J. S. Walsh, Cross*

der the name of "White Rose," but I don't see it used very extensively.

Q. Do they have their signs up where they have filling stations? A. The signs I have seen are seemingly what you would call a metal sign, punched.

Q. It is not over the pump? A. It is not on the pump, but attached to it by a metal sign.

Q. But you do see garages at different places with a sign some place about the garage, to indicate they are selling that kind of gasoline? A. Occasionally, yes, sir.

1145 Q. Is it not a fact that you know of garages in the same locality, say in the same block or in the same neighborhood, where one is selling the Standard gasoline and the other is selling the National gasoline? A. Well, I can't recall any particular instance where installations of that class are made. In fact there is very little gasoline sold in my territory that is advertised, than the Standard. They are the principal source of supply of gas in that territory.

Q. The Gulf and those that have been mentioned here are not operating in your territory? A. Not operating, no.

Q. That is all.

1146 By Mr. Schekter:

Q. You do know that the oil companies are selling and leasing this equipment only as an incident to the sale and distribution of their petroleum products? A. I know only to the extent that the equipments are in use, and the knowledge given to me by the users that the pumps are furnished them free by the Standard Oil Company.

Mr. Schekter: In so far as the witness has testified not of his own knowledge, I move that his testimony be stricken out.

Examiner McCorkle: The motion is overruled.

By Mr. Schekter:

Q. Now, I will ask you the question again, and ask for a responsive answer: You do know that the oil companies are selling and leasing this equipment only as an incident in the sale and distribution of their petroleum products, and that they are not engaging in the sale of equipment generally? A. So far as my knowledge of the plan is, the Standard Oil Company sells and loans both. They seem to sell where convenient, and in many instances in the case of competition it has been a matter of decision over weeks of duration, on which the final decision would be that they secured the business, to my knowledge, as an answer to me, simply because the equipment would be furnished to them without cost, not as a matter of choice, quality or service, but without cost.

Q. Again I ask you whether such business which the oil company does is incidental to this petroleum business?

Mr. Zechiel: I think the question has been answered. There is no use of answering it again.

Mr. Schekter: I think not.

Mr. Zechiel: I insist on my objection.

Examiner McCorkle: I do not know whether it was answered but it was asked once before.

Mr. Schekter: Yes, I have asked it three times before and have not yet got an answer.

By Examiner McCorkle:

Q. Have you answered the question? A. I have answered it as I understood it.

1150 *J. S. Walsh, Cross*

Mr. Schekter: Let us see if we understand each other.

Examiner McCorkle: Repeat the question, Mr. Stenographer.

(The stenographer read as follows): "Q. Now, I will ask you the question again, and ask for a responsive answer: You do know that the oil companies are selling and leasing this equipment only as an incident in the sale and distribution of their petroleum products and that they are not engaging in the sale of
1151 equipment generally?"

Examiner McCorkle: Read the answer.

(The answer to the question just repeated, was read by the stenographer, as recorded.)

Examiner McCorkle: That looks like an answer.

The Witness: I made it broad.

Mr. Schekter: I ask that the answer to my question be stricken out as not responsive to the question.

Examiner McCorkle: Leave it in.

Mr. Schekter: There was a question after
1152 that; what was it?

(The stenographer read as follows): "Q. Again I ask you whether such business which the oil company does is incidental to its petroleum business?"

The Witness: I consider I have answered it, although I can give it the same consideration.

Examiner McCorkle: I think that has been answered. Is there anything further?

Mr. Schekter: Nothing further.

(Witness excused.)

R. R. FAIRCLOTH, was called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. Your name is what? A. R. R. Faircloth.

Q. What is your address? A. Clinton, North Carolina.

Q. With what concern are you associated? A. S. F. Bowser & Company.

Q. What is the territory generally over which you do business? A. Charlotte, North Carolina, and surrounding territory. 1154

Q. You have heard Mr. Roos, Mr. Walsh and Mr. Lewis testify, have you not? A. Yes, sir.

Q. Do you conduct your business substantially as they have testified they have conducted their business? A. Practically the same; yes, sir.

Q. And is your experience in the conduct of your business substantially the same as theirs, to which they have testified? A. Practically so; yes, sir.

Mr. Zechiel: That is all.

CROSS-EXAMINATION by Mr. Speer:

Q. What companies operate in your territory? A. 1155 You mean the oil companies?

Q. Yes. A. There is the Standard Oil of New Jersey, Gulf Refining, Texas, The National Oil Company and a very few independent oil companies.

Q. Does the Texas Company install pumps on the leasing and loaning system? A. Yes, sir.

Q. And the Gulf Company also install them on the lease and loan system? A. Yes, sir.

Q. Do they install the Bowser pump when they loan them in that way? A. They use the Bowser and Wayne.

1156

Q. The Texas uses the Bowser mostly, do they not? A. Yes, sir.

Q. They buy those pumps direct from your company, and not through you? A. Direct; yes, sir.

Mr. Speer: That is all.

(Witness excused.)

G. A. SMITH, was called as a witness, and being
1157 first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address? A. G. A. Smith; Shenandoah Apartments, Richmond, Virginia.

Q. With what concern are you connected? A. S. F. Bowser & Company.

Q. What has been your experience with that company? A. You mean the duration?

Q. Yes. A. Except for three or four summers during which I attended college, since 1911.

Q. How long have you been in your present territory? A. Since December, 1918.

1158 Q. What is your territory? A. Richmond City and nearby counties of the state.

Q. You heard Mr. Lewis, Mr. Roos and Mr. Walsh testify? A. I did not hear all of Mr. Roos' testimony; I heard the rest.

Q. Who are the oil companies who are engaged in business in your territory? A. The Texas Company, the Standard of New Jersey, the Richmond Oil Company, the National Oil Company, and, I think, the Gulf Refining Company has just begun to operate there.

Q. With respect to the general practices and experiences in your territory, and with respect to the

leasing and loaning of oil pump equipments, has your experience been substantially the same as that of the three witnesses to whose testimony I have directed you? A. I think it has. I do not have present in my mind just now all of the various questions that were asked, but generally and substantially I think it has been the same.

Mr. Zechiel: That is all.

CROSS-EXAMINATION by Mr. Speer:

1160

Q. Has not this leasing and loaning system, Mr. Smith, caused more pumping equipment to be installed in your district than in all probability would have been installed if the system was not in vogue? A. Yes, I believe so.

Q. In fact, it has increased largely the installation of pumps? A. Yes, in my opinion.

Q. And in that way has enabled the pump manufacturers to sell more pumps than otherwise they would have been able to sell? A. Yes.

Q. The Texas Company leases and loans pumps under this system in your district? A. Yes.

1161

Q. Whose pump do they install when they make such leasing and loaning arrangements? A. Principally the Bowser pump, but others, too.

Q. Those pumps they buy direct from the manufacturing company, from your manufacturing company, and not through you? A. Yes.

Q. Do any of the other companies install oil pumps? How about the Gulf Company? A. As I say the Gulf Company has just begun to operate there.

Q. It is just beginning to operate? A. Yes, just beginning to operate, and I don't believe they have installed any since I have been on the territory.

1162 Q. In what territory were you a salesman prior to coming to this territory? A. At different times as to different territories. I was in West Virginia for a while and western Maryland and in northern Virginia, the Shenandoah Valley, and also in North Carolina for a while.

Mr. Speer: That is all.

RE-DIRECT EXAMINATION by Mr. Zechiel:

1163 Q. Just one question: In connection with the number of installations you testified that because of the leasing and loaning of oil tanks and pumps you believed there had been more installations than there would have been if there had been no leasing and loaning, and all installations had been through sales. Am I correct about that? A. Yes.

Q. Why do you think that is true?

Mr. Speer: I imagine, Mr. Examiner, that is a question of fact. He believes it is true because he has seen—

Mr. Zechiel: I would rather have the witness state it.

1164 Examiner McCorkle: In one case he gave an opinion, and in Mr. Zechiel's case he wants the reason for the opinion. Strictly, I think both of them are incompetent. Note the objection. You can go ahead and give your reason.

The Witness: I agree with the testimony submitted yesterday by Witness Willock. I think men with insufficient capital are induced to go into the business, and by insufficient capital I mean men that would probably not equip themselves with that style of outfit, as extensive equipment as they have to put in.

By Mr. Zechiel:

Q. And the reason you give now for believing there would not have been as many, is the same reason that Mr. Willock testified to yesterday; is that true? A. As I repeated it just now, that is my belief.

Mr. Zechiel: That is all.

(Witness excused.)

GEORGE J. MOHR, was called as a witness, and 1166
being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address. A. George J. Mohr; Freedom, Pennsylvania.

Q. You are connected with what concern? A. With the Freedom Oil Works Company.

Q. What is the general line of business of that company? A. Refined petroleum products.

Q. What is the general geographical territory over which you do business, Mr. Mohr? A. Pennsylvania, Ohio and West Virginia.

Q. You do business generally in the sale of gaso- 1167
line in these various states? A. Yes, sir.

Q. In that connection you transport your product back and forth between those states in the transactions? A. Yes, sir.

Q. Do you in connection with your business deal in oil tanks and pumps? A. Yes, sir.

Q. Do you sell such equipment? A. We do.

Q. And lease and loan? A. No, sir; we do not.

Q. Do you place any of those equipments with your customers under any sort of an agency contract? A. No, sir.

1168 *George J. Mohr, Direct*

Q. You handle them only through sale? A. Only through sale; yes, sir.

Q. How long have you been handling pumps and tanks in that way? A. I would say eight to ten years.

Q. In a general way to whom do you sell such equipments? A. Garages, filling stations, and an occasional store that wishes to handle gasoline in that way—that is a hardware store as a general thing.

Q. Do you sell such equipments to retailers who handle large gallonages as well as small gallonages? A. Yes, sir.

1169 Q. You make no restriction of any kind either by contract or agreement as to the use of such equipment by the purchasers thereof? A. No, after it has been paid for.

Q. Who are competitors in your territory? A. Principally the Atlantic Refining Company, the Gulf, the Texas—the Texas only partly, one or two sections—and the Pittsburgh concerns, Waverly, Transcontinental, the Liberty Oil, A. D. Miller & Sons, and maybe a few others.

Q. Do you sell in West Virginia, you say? A. Yes, sir.

Q. Who are your competitors down there? A. The
1170 Standard Oil Company of New Jersey, I believe—they can reach to points in West Virginia; the Fairmont and the Wheeling.

Q. Are you acquainted with the practice of some of your competitors of leasing and loaning such equipments to retailers of gasoline? A. Yes, sir.

Q. Have you ever lost any business because of that practice? A. We have.

Q. What were the facts in that respect? A. In one particular town there was a customer of ours for twelve or sixteen months, he had a small outfit, and his business was increasing. He says, "Now, I

need a larger outfit. The Atlantic Refining Company offered to put the outfit in free of cost."

Mr. Schekter: That is objected to as hearsay, not of the witness's own knowledge, and I, therefore, move to strike it out.

Examiner: McCorkle: Note the objection. Let the witness proceed.

The Witness: "If you people will do the same we will give you the business, as we prefer to handle your goods."

By Mr. Zechiel: 1172

Q. They told you that at the time you were attempting the sale of your goods? A. Yes, sir.

Mr. Schekter: At what time?

The Witness: At the time they were going to make the change, if we did not put it in.

By Mr. Zechiel:

Q. What other experience? A. We have another in what we call our Newcastle district, the very same —"We will give you the preference if you will give us the outfit."

Q. The same kind of experience? A. Yes, the 1173 same kind of experience.

Q. Was that experience common in the conduct of your business? A. Well, partly. In the case of any others they were starting in business, and gave us the opportunity if we would furnish the outfit to get the preference.

Q. Did you furnish the outfit? A. We did not.

Q. Did you sell such concerns? A. Very seldom. We tried hard but very seldom were able to do it.

Q. Do you know who did sell them? A. In most instances the Atlantic and the Gulf.

1174 *George J. Mohr, Direct*

Q. Do you know whether the Atlantic installed equipments in those cases under the lease agreements? A. The Atlantic sign was on the pump later.

Q. You had no conversation with the retailer in regard to that at the time? A. Not personally; only from our salesmen out on the road. Shall I go on?

Q. Yes, go ahead. A. One particular customer, I know positively, has the Atlantic outfit in, handling Atlantic gasoline, and would handle Freedom if it had not been for being given an outfit free of cost.

Q. How do you know that to be true? A. I saw
1175 the contract. He told our salesman that Freedom would get the business if we would furnish the outfit.

Q. Have you any other cases of that sort? A. Yes, I could mention two or three others where they gave us the first opportunity, but we not being willing to furnish the outfit the Atlantic Refining Company are now supplying the gasoline.

Q. Do you know about what per cent of the equipments in your territory are installed under lease and loan agreements? A. I could not say positively, but they have been quite numerous lately.

Q. From your experience would you be willing to
1176 make a fair estimate as to the approximate number or per cent of that sort of business? A. I am afraid I could not do that, no.

Q. In your experience do garages and other retailers in your competitive area have installed more than one equipment of the sort? A. Only the larger, or it depends a great deal on the location of the garage or filling station. There are occasionally some of course that have two or more pumps, but in the majority of cases one.

Q. In those cases where there are two or more, what is the fact, if you know, as to whether those

pumps have been installed under lease and loan agreements, or have been bought outright? A. Some have been bought outright; others have been installed free of cost.

Q. Where they have been installed free of cost, if you know, state whether or not the gasoline sold from those pumps was the gasoline of two different companies or of the same company? A. Most the same company. Occasionally other companies put gasoline in. It depends. If their stock happens to be low and another oil company comes along, sometimes they will buy it, but they are not considered regular customers. 1178

Q. That is the exception to the general practice? A. That is the exception; yes, sir.

Q. From your experience in the conduct of your business, is this business practice of leasing or loaning oil tank and pump equipments for a nominal consideration, under agreements or understandings that the lessee or the party using the pump shall not use in connection with the same the products of any other company than that furnishing the equipment, a sound business practice?

Mr. Speer: The question is objected to as incompetent, immaterial and irrelevant.

Examiner McCorkle: Note the objection. 1179

The Witness: We do not consider it good business.

Mr. Zechiel: That is all.

CROSS-EXAMINATION by Mr. Speer:

Q. You say your company deals in these tanks and pumps, or sells them to the users. You do that merely as an incident to your oil business, as I understand it? A. Yes, sir.

1180 *George J. Mohr, Cross*

Q. Do you sell them to the users at cost to you? A. No, sir; we figure on making a profit.

Q. A reasonable profit? A. Yes, sir.

Q. The Texas and Gulf Companies have begun to operate in your territory in rather recent years, have they not? A. Yes, sir.

Q. How long since the Texas began to operate there? A. I would say possibly two years.

Q. And how long since the Gulf began to operate? A. I would not say positively; I would say possibly four or five years.

1181 Q. So that there is more competition in your territory now between oil companies than there was a few years ago? A. Yes, sir.

Q. A few years ago the Atlantic Company as a matter of fact had a monopoly of the business, did it, a practical monopoly? A. Practically. I would not—

Q. And it then had adopted the practice of selling its product to the consumer under its trade name or brand? A. Yes, sir.

Q. It established agencies, selling stations, where it sold its product through these pumping equipments to the automobile people and other users of gasoline? A. I understand it did; yes, sir.

1182 Q. And then subsequently it adopted the loaning system instead of the agency system? A. Yes, sir.

Q. And it was doing that in sections where there was no competition against it, just as much as in sections where there was competition? A. There is competition practically everywhere in Pennsylvania and Ohio.

Q. Now? A. Now; yes, sir.

Q. But how long since the Atlantic Company began selling its product to the public in that way through agencies and through these pumping outfits? A. I have been connected with the station depart-

ment or distributing branches between four and five years, and they have been doing it in that time.

Q. They were doing it before you began? A. Probably so.

Q. There were many places at that time in your territory where they had practically no competition; they had a monopoly? A. Yes, the Atlantic Refining Company in some localities had a monopoly.

Q. And they were establishing the agencies and leasing and loaning pumps in those sections just the same as they were in sections where there was more active competition? A. Leasing and loaning them? 1184
I don't know about that. They have been doing that more recently.

Q. And the competition has been coming in, too, more recently? A. Oh, yes.

Q. And all of the companies that are coming in and trying to get the business, try to get it in that way, do they not, by establishing these pumping outfits where their oil is sold under their trade-mark or brand? A. Yes, most all of them.

Q. Then the result of this system you think has been to increase the number of these pumping outfits that have been used in your district? A. It naturally would increase them. 1185

Q. Is there any locality in your district now where the Atlantic Refining Company has no competition? A. No, I could not say positively as to there being any in my locality, no; it is pretty well filled up.

Mr. Speer: That is all.

By Mr. Schekter:

Q. When you make your sales of equipments what arrangements do you make with your customers for payment? A. We endeavor to get cash payment.

1186 *George J. Mohr, Cross*

Q. But where you do not? A. We get a cash down payment and the balance so much per month until all has been paid for.

Q. What provision do you make for reservation of title in yourself until the payments have been completed? A. We have the contract signed by them that they agree to complete the payments.

Q. And pending that payment the title is reserved in your name? A. Naturally it would be.

Q. During the period pending the payment of all installments, what restriction do you have as to the
1187 use of the equipment? A. Our contracts read that we expect them to use Freedom gasoline, but it does not stipulate all Freedom gasoline.

Q. Have you seen the lease agreement used by the Atlantic Refining Company? A. I have.

Q. Do you know that that agreement does not require them to use all the gasoline of the Atlantic Refining Company? A. Not all the gasoline of the Atlantic Refining Company, but only their gasoline.

Q. And you mean to say that the lease agreement of the Atlantic Refining Company provides they may not buy the gasoline of any other oil company?

1188 Mr. Zechiel: I think that contract will speak for itself.

Mr. Schekter: The witness has testified to what the contract contains.

Mr. Burdeau: He has no right to testify to his knowledge of a written instrument.

Mr. Schekter: I am testing the credibility of this witness, and I think I should be allowed the utmost latitude in doing so.

Examiner McCorkle: Why a question about the contract when you have the contract there?

Mr. Schekter: We will let the witness see the contract.

Mr. Burdeau: I object to his being shown the contract for that purpose.

Mr. Schekter: I press the question.

Examiner McCorkle: The witness may answer the question.

The Witness: The contract, if I remember rightly, and I believe I do, reads to use only Atlantic gasoline in that outfit.

Q. In that outfit? A. In their outfit.

Q. It does not so far as you remember require that they may not— 1190

Mr. Zechiel: He has answered that.

Examiner McCorkle: Yes; I will rule out any further questions along that line.

Mr. Zechiel: Nobody claims that; not even the Commission has claimed that.

By Mr. Schekter:

Q. Now, Mr. Mohr, I want the name of each one of the persons whom you say have ceased dealing with your company as a result of the unfair competition of the Atlantic Refining Company? A. I could not give you each one; I could give you some.

Q. Give me those you recollect. A. H. H. Cable. 1191

Q. Address? A. Rochester, Pennsylvania, and Beaver, Pennsylvania.

Q. Yes. A. The Wampum Store Company, Wampum, Pennsylvania. The Wampum Garage at Wampum, Pennsylvania. Those three I am positive had been using our goods and are not now. As to those I refer to that gave us the preference and later did not give us the business on account of the Atlantic giving them outfits, there is David Mitchell, of Monaca, Pennsylvania. There have been others reported by different salesmen, but their names I don't recall.

1192 *George J. Mohr, Cross*

Q. Of what did that unfair competition consist in the case of H. H. Cable, of Rochester, Pennsylvania?

Mr. Zechiel: There has been no question about unfair competition, and you are asking this witness about a legal matter. He does not know about that sort of thing and has not testified along that line. He gave nothing but the facts in his direct-examination. I think the question is not a proper one.

Mr. Schekter: The question is withdrawn.

1193 By Mr. Schekter:

Q. Mr. Mohr, what are the facts constituting the unfair practice or unfair competition of the Atlantic Refining Company in the case of H. H. Cable? A. Well, in plain words, as we referred to it, the other people were buying his business.

Q. What were the facts, please? A. As I said before, we had been supplying him oil and gasoline. He had a small outfit, a filling outfit and he wanted a larger outfit. He asked us if we would supply it free of cost. We told him no, we did not do that. He said, "Well, the Atlantic Refining Company offered to do it if I will only use their goods." We
1194 tried to talk him out of it, tried to show him—

Q. Mr. Mohr, so that there may be no misunderstanding, I am asking you to testify here as of your own knowledge, what you know personally, and not what others have told you.

The Witness: I know them personally.

Mr. Burdeau: I resent that interruption. I think he is stating what is absolutely responsive to your question. It may not suit counsel very well.

1195

Examiner McCorkle: I hold that it is responsive to the question.

Mr. Schekter: I want it clearly understood that I do not want any answer except of the witness's own knowledge, and I think I am in my rights in asking for it.

Examiner McCorkle: The witness will be allowed to testify to what any of these people told him in regard to the leasing of these pumps.

Mr. Schekter: Subject to my objection?

Examiner McCorkle: Yes.

1196

The Witness: May I state why I put it this way?

Examiner McCorkle: Just answer his question.

The Witness: All right. Where was I?

(The stenographer read the concluding part of the last previous answer, as follows): "We tried to talk him out of it; tried to show him"—

The Witness: We tried to show him it would be to his advantage to own his own outfit and buy what he pleased and when he pleased—in other words not to be tied up to any one company.

By Mr. Schekter:

1197

Q. And what the Atlantic Refining Company did was to make an arrangement with him whereby they furnished him his equipment for the sale of their product under their trade-mark or brand? A. That is true.

Q. And what is true in that case is true with the other persons you have mentioned? A. Yes, sir.

Mr. Schekter: That is all.

1198 *George J. Mohr, Cross*

By Mr. Hayes:

Q. Mr. Mohr, at what price do you sell this pump equipment? A. We sell it at the factory retail price list.

Q. That is what? I don't know what price that is? A. We get any pump they want, but there is one pump we recommend.

Q. What pump is that? A. If they ask our opinion—that is the guarantee visible outfit. That pump costs—

1199 Q. Complete and installed in place? A. We do not install them. We sell the pump and tank to the prospective customer and he installs them.

Q. How much? A. The pump price list in $400. The tank depends on the size of the tank.

Q. You divide that into how many monthly payments? A. We generally get $100 cash down, sometimes $50 and $20 a month. If they are able to pay for it in two months' time we are better pleased.

Q. How long has the longest period run? A. Occasionally a man will fall down in his payments—

Q. I don't mean that. What is your general length of your contract for the payment of the outfit? A.

1200 At that rate, at $20 a month, it will run possibly fourteen to eighteen months.

Q. Fourteen to eighteen months? A. Yes.

Q. You have been in business about ten years? A. Have we?

Q. Yes. A. The Freedom has been in business since 1879.

Q. And you have been with it for ten years, as I understood? A. Well, I have been in this department between four and five years; I have been with the company for thirty years.

Q. Has each succeeding year's business been better than the preceding year's business? A. It has.

Mr. Hayes: That is all.

The Witness: Could I add more to it?

Examiner McCorkle: You need not add anything unless requested by counsel.

By Mr. Speer:

Q. On the outfit you sell on time you do not charge him interest? A. No, sir.

Q. Do you sell under a trade name? A. Freedom gasoline.

Q. And when you sell these outfits do you have your name put over them? A. We give them a globe with our name. 1202

Q. And you expect them to keep it there? A. We prefer them to; we don't insist; we don't compel them to.

Q. Would you be satisfied to let them keep your globe there and buy gasoline from somebody else and sell it, with your globe over your outfit? A. No, we would not want them to sell somebody's else gasoline under our name.

Q. Of course not; neither does any other company that has a trade-mark or brand in which they take pride, as representing a good quality of gasoline. A. Naturally not, because we would not know what they were putting out and it might reflect on Freedom gasoline. 1203

Q. Therefore, so long as they keep your globe over your outfit, and so long as they are paying you for it, they do buy, as a rule, your gasoline? A. Well, mostly.

Q. If you found they were not buying your gasoline, and selling somebody's else through that outfit, would you make them take down your sign? A. We never did. We have gone to the people and asked why they were not using Freedom gasoline. We never compelled any one to take a sign down.

Q. You allowed them to keep your sign there and sell any kind? A. We could not stop them.

Q. You could not stop them? A. No.

Q. You were willing that some other gasoline should be sold under your brand? A. We never went into that, as to their not telling people it is not Freedom gasoline.

Q. If the sign is over the outfit and an automobile comes up to get gasoline, does not the man believe that that is the gasoline that is being sold through the outfit, when he sees the sign there? A. Yes, quite
1205 naturally, but I venture to say that the majority of people driving automobiles don't pay a whole lot of attention to whose gasoline they buy—that is, the make of gasoline.

Q. You think not? A. No, sir.

By Mr. Schekter:

Q. Do you mean to say then that a man traveling the highway would stop at one service station and buy Atlantic gasoline and proceed and the next time buy Gulf where he had the opportunity of buying Atlantic, and pay no attention to the question as to what gasoline or the quality he was getting? A. He will
1206 buy gasoline where and when he needs it regardless of whose make it is.

Q. And where he has the opportunity of purchasing the gasoline which has appealed to him, being sold under the trade name of a particular brand, you mean to say he would not exercise that choice? A. If that gasoline has appealed to him he will naturally look for it if it is nearby.

By Mr. Speer:

Q. If there was no sign up at all, is it not likely, if he knew his business, that he would inquire what

kind of gasoline he was getting before he would fill up his tank? A. Judge, if you when you are driving along and need gasoline, stop at an outfit, there are very few people ask you whose gasoline they are handling.

Q. If you are out you will take any? A. Out, or need it.

Q. Are you liable to go up to a filling station, when there are plenty of filling stations with trade-marks over them, and buy gasoline from a filling station with no sign, without making any inquiry about the quality? A. I being in the gasoline business would 1208
naturally inquire, but I know many people who do not.

Q. They probably don't know there is any difference? A. Yes, indeed; some do and some don't. I will say that the majority of automobile drivers don't know any difference.

Q. There is a difference, is there not? A. There is a difference in gasolines; yes, sir.

Mr. Speer: That is all.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Mr. Mohr, if you know, who first introduced the system of leasing and loaning oil tanks and pumps into 1209
your territory? A. No, I don't know positively.

(Witness excused.)

E. E. GRANT, was called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address? A. E. E. Grant, 110 South Dearborn Street, Chicago, Ill.

Q. With what organization are you connected? A. I am secretary and treasurer of the Independent Oil Men's Association of Chicago.

Q. Who are members of your association? A. We have two classes of members, active members, those exclusively engaged in the jobbing business, and associate members who are refiners and supply men.

Q. Where territorially does your membership come from? A. All over the country.

Q. What is your position with that organization? A. Secretary and treasurer.

1211 Q. As secretary and treasurer of this organization do you have charge of the books and the minutes of the meetings? A. Yes.

Q. And other notes of acts done by your company or organization? A. Yes.

Q. I will ask you, Mr. Grant, whether or not your association took any action with respect to the general practice of oil companies over the country, known generally as the leasing and loaning of oil tanks and pumps?

Mr. Speer: I want to object to that as incompetent, immaterial and irrelevant.

Examiner McCorkle: Note the objection.

1212

By Mr. Zechiel:

Q. You may answer. A. I think we made a complaint three years ago—

Q. I am speaking now with respect to any recent acts of your association. A. The Board of Directors at a meeting in September passed resolutions unanimously—

Mr. Speer: I object to that, as to what they did, as immaterial, irrelevant and incompetent. It does seem to me, Mr. Examiner, that that

ought to be ruled out. It seems to me that no one can claim that an organization of that kind, meeting and passing resolutions is making testimony one way or the other, because their action would depend upon a great many things that may be proper and may not, and upon the influences that may have been brought to bear upon them.

Examiner McCorkle: Have you a copy of the minutes along with you?

The Witness: No, but I sent the Trade Commission a copy of the resolution as passed by the Board of Directors. 1214

Examiner McCorkle: The objection will be noted. I will let it go in and will put it up to the Commission.

Mr. Speer: In that case it appears, Mr. Examiner, that the Commission has it.

The Witness: That was in connection with the Indiana case, Judge.

Examiner McCorkle: Argument off the record, Mr. Reporter.

(Argument off the record.) 1215

Examiner McCorkle: Read the pending question.

(The stenographer read as follows): "Q. I will ask you, Mr. Grant, whether or not your association took any action with respect to the general practice of oil companies over the country, known generally as the leasing and loaning of oil tanks and pumps. * * * I am speaking now with respect to any recent acts of your association."

Examiner McCorkle: That is your question?

Mr. Zechiel: Yes, and I would like to have Mr. Grant continue with his answer.

Mr. Speer: I object to the question as immaterial, incompetent and irrelevant.

Examiner McCorkle: You may proceed.

The Witness: The Board of Directors at a meeting in September passed resolutions unanimously approving of the ruling in the Standard of Indiana case,
1217 and copies of those resolutions were sent to the chairman of the Federal Trade Commission and the American Petroleum Institute.

By Mr. Zechiel:

Q. What occasioned the action of the Board of Directors in passing this resolution?

Mr. Hayes: The objection goes to all this?

Mr. Zechiel: Yes.

The Witness: The ruling of the Commission in the Standard of Indiana case, which was promulgated on or about the first of August.

1218 By Mr. Zechiel:

Q. Were there no other matters intervening in the meantime that were taken into consideration by the Board of Directors? A. Oh, yes; the referendum which was held between the—

Q. Will you describe exactly what was done in that respect? A. There was a circular letter sent out to each active member explaining that certain companies, both standard and independents, had been in the habit of loaning or leasing for a nominal consideration curb pumps and tanks, and we asked them to reply to two or three questions in that referendum.

Q. Do you have a copy of that letter? A. Yes.

Q. I would like to have it. A. There is a copy (exhibiting the same to counsel).

Q. What was the result of this investigation or referendum? A. There were about 81 per cent who were opposed to this practice and 19 per cent in favor of the continuance of the practice.

Q. By referring to this practice, you are referring to the leasing and loaning of tanks and pumps? A. For a nominal consideration, yes.

Q. Does that include under an agreement to use in those pumps only the product of the company furnishing the pump? A. The questions did not cover that but it has always been considered that where a pump and tank were supplied for a nominal consideration the parties operating the pumps and tanks would use the gasoline supplied by the parties who held title to the equipment. 1220

Mr. Speer: We object to that.

Mr. Schekter: Can we ask that this entire line of examination be subject to our objection, as incompetent, immaterial and irrelevant?

Mr. Zechiel: All right.

By Mr. Zechiel: 1221

Q. Mr. Grant, you testified, "It has always been understood." How do you arrive at that? What are the facts upon which you make that statement? A. From contracts that I have seen. You know in various sections of the country this practice is not indulged in. For instance in the far west, or I mean to say, between the Mississippi River and the Rocky Mountains, the practice has not been general. It has been general only in the Indiana territory for about three years. So that the practice has been new so

far as the middle west is concerned, as compared with the east.

Q. When you state that it was generally understood that only gasoline of the parties furnishing the pump was to be used through the pump, and that that was included in the question of furnishing pumps at a nominal consideration, how do you come by that knowledge? A. I got that knowledge from the contracts of the Texas Company.

Q. Through any other source? A. No.

Q. I am not certain whether you had completed
1223 your statement about what was done with respect to this referendum by your Board of Directors? A. They simply passed these resolutions and then sent out a letter to the trade recommending that they cease this practice if they had been indulging in it.

Q. Do you have a copy of the resolutions with you? A. No, I have not. I did not come direct from Chicago. I asked them to send me certain papers here, and some are here and some are not, but I know that is not here.

Mr. Zechiel: I want to make that resolution a part of this record to be submitted.
1224 I understand it is with the Commission.

Mr. Speer: I object to the entire examination as incompetent, immaterial and irrelevant.

Mr. Zechiel: I will just have to take it to get that, Mr. Examiner.

Mr. Speer: You do not have to do it, Mr. Zechiel.

Examiner McCorkle: Argument off the record, Mr. Reporter.

1225

(Argument off the record.)

Mr. Zechiel: It is understood I will get the copy that was sent into the Commission and make it a part of the record. That is all.

CROSS-EXAMINATION by Mr. Speer:

Q. How many members has your Independent Oil Men's Association? A. 279.

Q. When was it established or organized? A. Twelve years ago.

Q. To how many of the members of your association was this referendum you speak of sent? A. It was sent out to all active members, 114. 1226

Q. In what business are the associate members engaged as a rule? A. The associate members are refiners and supply men.

Q. And the active members are what? A. They are strictly oil jobbers.

Q. So you did not send it out to any refiners? A. No.

Q. But your first interrogatory was whether the refiner was justified in furnishing a tank at a nominal rental, and not whether a jobber was justified in doing it? A. My answer would be the same.

Q. But that is the way your query read? A. Yes. 1227

Q. And of that 114 to whom the referendum was sent, you say 81 per cent voted against the practice? A. Yes.

Q. Out of these 114 members to whom interrogatories were sent, how many replied? A. We had as I recollect it about 79 replies, but I have not the facts here.

Q. Of those replies how many were in favor of it? A. Sixty-three were against it and the balance were in favor of it. Others did not answer at all.

1228 *E. E. Grant, Cross*

Q. Have not those who have been opposed to this practice been quite active in circulating propaganda against it? A. Yes.

Q. Those that are using it have not paid much attention to their side of the case? A. No.

Q. Is there any other organization of independent oil men in this country? A. Yes, sir.

Q. Do you know how many members they have? A. No; there are three other organizations.

Q. What are they? A. The American Independent Petroleum Association, which is an organization of
1229 jobbers similar to our own.

Q. Do you know how many members they have? A. No, I do not.

Q. More than yours? A. No, they have less, because they principally operate in the middle west. Then there is the National Petroleum Association, which is an organization of eastern refiners. Then there is the Western Petroleum Refiners Association, which is an organization of mid-continent refiners.

Q. They both have large memberships, have they not, of men engaged in the oil business? A. No.

Q. Do you know what their membership is? A.
1230 Yes.

Q. Where does your company have its headquarters? A. Chicago.

Q. Most of your members are located in the west? A. No.

Q. Where are they located? A. They are located from Boston to San Francisco and from Minneapolis to New Orleans.

Q. In what business were you engaged before you became secretary of this association? A. In the oil business.

Q. Are you engaged in it yet? A. No, sir.

Q. Where were you engaged in the oil business? A. In Chicago.

Q. In what way were you engaged in it? A. I was manager for the Riverside Oil Company there in 1911. I was then secretary of this same association for two years, 1916 and 1917. I was then connected with James B. Berry & Son, Oil City, as buyer in Tulsa, and then back to this association again. But previous to that I had had twelve to fourteen years' experience in Canada in producing, refining and marketing.

Q. Your first experience in this company was in 1232
1911? A. 1911, yes, sir.

Q. Did you continue in the business from 1911 up to 1916? A. Yes, sir.

Q. You were in the oil business? A. Yes, in the oil business.

Q. In connection with the same company, the Riverside? A. Yes, sir.

Q. How long were you with the Berry Company? A. About ten months, shortly after the close of the war.

Q. Were there any other questions put to your association in reference to this business? A. I don't know what you mean?

1233

Q. Did not you put this question to them in this same referendum: "Is the small refiner or jobber justified in arranging with the distributor on a percentage basis to operate such filling pump and tank for the purpose of distributing its particular product?" A. Yes.

Q. How did they answer that question? A. That question was so complex, it was answered in so many different ways, that the referendum was never satisfactorily determined.

Q. Well, in one way or another they were all in

favor of some such arrangement, were they not? A. Oh, no; every man had a different idea.

Q. But they all thought they had a right to make some sort of arrangement by which they could have their gasoline sold through a filling station? A. Some of them did.

Q. In connection with this referendum, is it not a fact that those who were opposed to this practice were active in trying to persuade the others to vote against it; there was quite a campaign made to that effect? A. No, there was no campaign.

1235 Q. There had been considerable agitation of the matter? A. No. The matter had laid dormant for a long time, and it was revived at a conference here on the 26th of June. Then of course the trade papers reported that conference and the results of it, and the trade was naturally aroused and interested, and prepared for the referendum.

Q. I think you stated already that those who were opposed to it were quite active in circulating propaganda and in trying to convince the trade that it was a bad practice? A. No, I did not say that.

Q. What did you say? A. I said that matter was revived on the 26th of June by a conference held in

1236 Washington.

Q. I am speaking of your testimony some time ago. A. Oh.

Q. Did you not testify in the early part of your testimony that those who were opposed to this practice were quite active in stirring up a sentiment against it? A. No, I think not.

Q. You did not say that? A. I don't think so.

Q. And that those who were using it did not pay much attention to creating a sentiment one way or the other? A. I said that, yes.

1237

Q. Then those who were opposed were quite active in trying to create a sentiment against it? A. They may have been.

Q. Mr. Grant, you did not send out any interrogatories to the public generally as to what they thought of this practice? A. No; the public were not members.

Q. They were not interested, I take it? A. Not interested, no.

Mr. Speer: That is all.

(Witness excused.)

1238

W. T. LAIRD, was called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address? A. W. T. Laird: Oil City, Pennsylvania.

Q. With what concern are you associated? A. I am employed as a traveling salesman by S. F. Bowser & Company, of Ft. Wayne, Indiana.

Q. What is your business? A. Selling pumps, tanks, and their general line of equipment.

1239

Q. And your territory is what? A. I have four counties in the vicinity of Oil City, Pennsylvania, consisting of Crawford, Forest, Venango and Clarion.

Q. How long have you been with the Bowser Company? A. Since January, 1917.

Q. In the course of your business do you have occasion to travel about over this entire territory? A. I do.

Q. What is the fact in your territory, do garages usually have more than one installation of these pump equipments? A. As a rule it consists of one installation of a gasoline pump, with a very few exceptions. There are exceptions where they have installed an additional pump in order to handle two grades of gasoline.

Q. Are those occasions frequent, Mr. Laird, or how do you describe it? A. I know of two or more occasions at Meadville, Pennsylvania, Crawford County.

1241 Q. You do not know of more than the two occasions? A. I cannot recall at this time more than two occasions.

Q. About how many installations are there in your territory, just in a rough way? A. Of what type?

Q. Of any kind of curb pump? A. That would be rather hard, to give you an answer to that.

Q. Can you venture an approximation? A. In the four counties of all kinds of equipment?

Q. All kinds, yes. A. I am not prepared to give you a definite answer on that.

Q. No, I don't want that; just roughly, as to the number? A. It would of course run into several

1242 hundred, but as to saying even approximately I would hesitate to say.

Q. Would you venture four or five hundred? A. I would say it was fully that many, if not more.

Q. Of these installations do you know, if you have knowledge, how many of them are Gilbert & Barker installations, if any? A. The Gilbert & Barker installations are greater than those of other competitive companies, I would judge.

Q. Would you say half of them? A. I would say fully half if not more.

Q. Are you acquainted with the practice of certain oil companies of leasing and loaning such equipments

to customers? A. I could not testify as to their method of conducting business because that is something that does not concern me, and I never have asked them.

Q. If you don't know, you can just say you don't know. That is all.

Mr. Hayes: No questions.

(Witness excused.)

1244 ELMER E. HARRIS, was called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your name and address? A. Elmer E. Harris; Buffalo, New York.

Q. With what concern are you connected? A. The Elmer E. Harris Company, treasurer.

Q. Is that the concern which is a respondent in the case of the Federal Trade Commission v. Elmer E. Harris? A. Yes, sir.

Q. Where are you engaged in business? A. Principally in Buffalo, Buffalo and Lockport. Lockport 1245 is in one of the adjoining counties.

Q. Your business is what? A. Jobbing, buying, compounding and selling.

Q. What? A. Oils and gasoline, all products of petroleum; pumps or anything that we can make a dollar on—sell a piano, if necessary.

Q. Do you in that business handle pumps and tanks? A. Yes, sir.

Q. How do you handle these equipments in connection with your business? A. We install pumps without any agreement wherever we think it would

1246 pay us to put them in; wherever we can put them in.

Q. You mean you sell them or install them? A. In a good many cases we sell them.

Q. Are sales made with a reasonable profit on the transaction, or cost? A. Yes, we generally try to get as much as the pump man would get himself direct, so as to protect him. We don't work for love.

Q. You don't always sell; you some times— A. In the great majority of cases we put them out for the trade.

1247 Q. What is the agreement or understanding in those cases? A. We have not anything more than it is generally understood that the man puts up a garage and telephones us. We go and look him over, and if we think he is going to be good enough to use anything we move out a tank and set it up. There is no agreement.

Q. In those cases you charge nothing? A. No, sir. When we first started we followed the example of some others and charged a dollar a year and never collected it.

Q. How many of such equipments have you installed? A. I presume something over 100, maybe

1248 120.

Q. Where do you purchase your equipments? A. We purchase mostly Wayne pumps, although if a man has a particular kind—if some pump man has gone to some prospective customer and has persuaded him that he has a pump he would like, we generally try to get the pump the customer likes. There are a good many Bowsers.

Q. Those manufacturers, are they all outside of the State of New York? A. The pump manufacturers?

Q. Yes. A. Oh, yes.

Q. When you place these pump equipments with your customers do you have the equipment sent from the factory to your customer? A. No, sir, direct to us as a general thing. I think there are only one or two exceptions that I know of where pumps may have gone direct from the factory to Lockport, which is about 27 miles from us, down about the same distance as we are from the falls. To save handling, and to hurry it, we have had one or two sent direct. Usually we carry them in stock.

Q. Those that you carry in stock you have in the same wrapping or crating, that they came in when 1250
shipped to you? A. Yes, sir.

Q. And you take them right out of your stock and install them at these various places? A. We do not very often send them out with the crating, because they take up too much room that way.

Q. You uncrate them? A. We uncrate them, as a general thing, as we send them out.

Q. Do you know, Mr. Harris, in your territory who first introduced this practice of leasing or loaning these pump equipments?

Mr. Speer: I object to that as immaterial, incompetent and irrelevant. 12..

Examiner McCorkle: Note the objection. The witness may proceed.

A. I do not think I could swear to who did it first, only I could say that we did not.

Q. That is all. A. But it came in so gradually I really don't know who was the first instigator of it.

Mr. Zechiel: That is all.

1252

CROSS-EXAMINATION by Mr. Speer:

Q. Is it not a fact that the companies began doing it in places where there really was no competition, to develop new business? In order to get the business in that community they would establish a station? A. Not so far as we are concerned. There has always been competition where we have been doing business.

Q. Everywhere you are there is competition? A. There has always been competition against us. I
1253 am not making it appear as though we were the competition. It has always been a lively place for business.

Q. You don't know how that may be as to other companies? A. What?

Q. As to other companies in your locality? A. Oh, no. I am not testifying about some other situation.

Mr. Speer: That is all.

(Witness excused.)

1254

M. A. BONNELL, was called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address? A. M. A. Bonnell, Erie, Pennsylvania.

Q. With what concern are you connected? A. The Penn Oil Company.

Q. What is the business of that company? A. We are jobbers and retailers of lubricating oils and gasoline, and so forth.

1255

Q. What is your territory? A. The territory in gasoline is practically all of the City of Erie; on lubricating oils outside of Erie in three or four states.

Q. Throughout three or four states? A. On lubricating oils.

Q. But on your gasoline? A. Almost exclusively Erie City.

Q. In connection with your business do you handle pumps and tanks? A. Yes, sir.

Q. Do you lease or loan such equipment? A. We did lease a few two or three years ago; none since

Q. How long have you been handling them in a 1256
general way? A. Three or four years.

Q. You sell them to your customers or trade generally, do you? A. Yes, sir.

Q. In making your sales of such equipments do you aim to realize a profit on the transaction? A. Yes, sir.

Q. To whom do you sell them generally? A. To garages and stores that wish to have gasoline at the curb.

Q. You say two or three years ago you were leasing them? A. We loaned three outfits three years ago.

Q. What was the occasion of your going into the 1257
loaning or leasing? A. Our competitors were loaning pumps. These people that wanted to handle gasoline were friends of ours, and we simply offered to loan the pumps. They were all new dealers in gasoline.

Q. Who are your competitors? A. The Atlantic Refining Company, Bayerson Oil Works, the United Oil Manufacturing Company and the Warren Oil Company of Pennsylvania.

Q. Have you ever lost any business because of the practice of competitors of yours in leasing such equipments to customers? A. No, sir.

Q. You say you are not now leasing such equipments? A. No, sir, not now.

Q. Do you ever have requests from your customers? A. Very many requests.

Q. But you do not? A. We simply refuse.

Q. In making your answer when you said you never lost customers or prospective customers— A. We never lost a customer because in practically every case the pumps were given to stores that had never handled gasoline. We have lost prospective customers.

1259 Q. Referring to prospective customers, what are the facts about that? A. I can recall two or three cases within the past year where they were intending to put in pumps and had made us a proposition, wishing us to put in a pump on a lease or loan proposition, and we refused to do it. They went around to our competitors and secured the pumps. I mean so they tell us.

Q. What was the case in which they told you that? A. In one case we had practically closed the sale to a grocer of a second-hand pump outfit, and they finally said the Atlantic Refining Company had offered to give them a pump free of charge, and he

1260 naturally decided to accept the pump.

Mr. Schekter: I move that the answer be stricken out as hearsay information, pure and simple.

Examiner McCorkle: Note the objection.

By Mr. Zechiel:

Q. Were the other occasions about which you have spoken, under similar circumstances? A. Under similar circumstances.

Mr. Zechiel: That is all.

M. A. Bonnell, Cross

1261

CROSS-EXAMINATION by Mr. Speer:

Q. Do you manufacture your own gasoline? A. We do not.

Q. As a matter of fact your sales of gasoline have increased rather than diminished in the last few years? A. Yes, sir.

Mr. Speer: That is all.

By Mr. Schekter:

Q. Did you see the agreement under which the Atlantic Refining Company arranged with the person whom you have mentioned? A. No, sir. 1262

Mr. Schekter: That is all.

(Witness excused.)

Thereupon, at 4:20 o'clock P. M., the hearing was adjourned until tomorrow, Wednesday, November 26, 1919, at 9:30 o'clock A. M.

1263

1264 *Paul Himmelfarb, Direct*

Washington, D. C.,
Wednesday, November 26, 1919.

Met at 9:30 o'clock A. M., pursuant to adjournment.

Before: Examiner George McCorkle.

Appearances: As heretofore noted.

Proceedings.

1265 PAUL HIMMELFARB, was called as a witness, and having been first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. State your name and address? A. Paul Himmelfarb; Rosslyn, Virginia.

Q. With what company are you connected? A. The Penn Oil Company.

Q. Does that Penn Oil Company have any relation at all to the Penn Oil Company in the State of Pennsylvania? A. We have a branch in Philadelphia.

Q. In Philadelphia? A. Yes, sir.

1266 Q. You are not acquainted with Mr. Bonnell, of the Penn Oil Company, of Erie, Pennsylvania? A. No, sir.

Q. What is your general line of business? A. Refined oils and gasoline.

Q. Jobbing? A. In the jobbing business.

Q. Where is your territory? A. Here in the city.

Q. I mean is it all within the district here? A. No, some in Virginia.

Q. What is your territorial area generally? Where do you do business? A. That is for this district here, or all over?

Q. Wherever you do business? A. Baltimore. Baltimore is our main office; Washington and Philadelphia.

Q. Around in Baltimore what is the territory over which you do business, around Baltimore? A. It takes in about twenty miles in Maryland around Baltimore.

Q. Within a radius of twenty miles? A. Yes, sir.

Q. And at Philadelphia? A. Right in the City of Philadelphia.

Q. And here in this location? A. Washington, 1268
yes.

Q. Outside of the District any? A. In Virginia.

Q. What kind of a business do you run, and how do you conduct it? A. Mostly tank wagon business?

Q. Who are your customers? A. We have some wholesale consumers and jobbers, and also retail filling stations of our own that we operate here in the city.

Q. You mean you sell to garages and smaller places? A. Yes, sir.

Q. You also have some service stations of your own? A. Yes, sir.

Q. Are they owned by your company? A. Yes 1269
sir.

Q. How many such stations have you here in Washington? A. We have about thirty here in the city.

Q. How do you conduct your business in Baltimore? A. They have some stations, and they only sell to garages, and so forth.

Q. Retailers? A. Yes, sir.

Q. And in Philadelphia? A. The same way.

Q. In connection with your business do you ship your product back and forth from your main of-

fices out to all your distributing points? A. To the filling stations, yes.

Q. Are you engaged in handling pumps and tanks, and equipment generally, in the distribution of your products? A. Yes, sir.

Q. In that respect do you sell such equipments? A. Yes, we sell occasionally. We have not sold any for some time, though.

Q. How long have you been engaged in the selling of such equipment? A. I would say about five years.

Q. Do you lease or loan such equipments? A.
1271 We are not doing it now, no, sir.

Q. Have you done it? A. Yes, sir.

Q. During what time were you engaged in that kind of business? A. About three years ago, maybe four years ago. We have not loaned any pumps out since.

Q. At that time for how long a period had you been loaning? A. Just about a year, maybe a little over.

Q. Are those facts true also of your Baltimore and Philadelphia stations in connection with the business there? A. Yes.

Q. Who are your customers generally to whom you
1272 have sold such equipments? A. They are mostly retailers.

Q. Garages, stores and that sort? A. Yes, sir.

Q. To whom have you sold such equipments or leased it? A. About to the same class

Q. What was the occasion of your beginning the practice of leasing and loaning such equipment? Which did you do, lease or loan? A. Loan.

Q. What was the occasion of your loaning such equipments to your customers? A. At that time when we did it we were a new concern here and other people had done the same thing, and just gained customers.

Q. By other people to whom do you refer? A. Well, there are pumps here in town that have been distributed by the Standard, the Texas Oil Company, also the Columbia.

Q. And you engaged in that practice to meet the competition? A. Yes, sir.

Q. Do you know whether such equipments installed by the parties concerned, which you have named, were put in under lease or loan agreements? A. Recently?

Q. At that time? A. Certain parties, where they have loaned them? 1274

Q. Yes. Repeat the question.

(The stenographer read as follows):

"Q. Do you know whether such equipments installed by the parties concerned, which you have named, were put in under lease or loan agreements?" A. Not at this present time, I don't.

Q. I thought you testified that you installed under a loan agreement certain of these pumps because certain other parties had installed them? A. Yes, sir.

Q. Do you mean that the other parties installed such equipments under lease or loan agreements? A. 1275
Yes, sir.

Q. What was the occasion of your ceasing that practice? A. Why, when we ceased it?

Q. Yes. A. It was about three years ago when the market was out so about here that there was not anything in the merchandise, it was not a paying proposition. It did not pay to sell the merchandise, even to pumps that were owned by the other people.

Q. You mean that about that time you were not wholesaling gasoline at all? A. Well, we practically had to give up wholesaling gasoline at that time be-

cause it cost us more than what we could get for it.

Q. How long did that condition remain? A. That remained almost up until here two or three months ago.

Q. Have you now such equipments out with customers under a loan agreement? A. Not that we have put out recently. We might have a few that we put out at that time, but we have sold the best part of them, and collected them in since that time.

Q. Have you in the course of your business of gas-
1277 oline products, lost any customers, or prospective customers, because of the practice of leasing and loaning such equipments by your competitors? A. Yes. Here recently there is a concern that has been putting them out again, leasing tanks here, and recently started in again.

Q. You say you have lost customers, or prospective customers? A. Well, we have not been running after the wholesale trade here recently, because there is not anything in merchandising; there is no profit in it.

Q. You say you have lost some business because of that practice? A. Yes, sir.

1278 Q. Are those same conditions true in your Baltimore and Philadelphia districts? A. I think Philadelphia is, yes.

Q. What do you say about Baltimore? A. I could not exactly say. I have direct charge of the Philadelphia place but I don't know just exactly the conditions in Baltimore.

Q. What is your experience in your territory generally? Do garages and other retailers have installed more than one of these equipments at the same time? A. Here recently they are installing, in fact they are doing away with the old equipments and putting in

new equipments, which I understand they are not buying; they are only leasing the equipment.

Q. That is hardly an answer to my question. Read it and see, Mr. Himmelfarb, if you get it more clearly.

(The pending question was read by the stenographer as above recorded.)

A. Whether they themselves—is that what you mean?

Q. Let me amend the question. Do garages and retailers generally in your territory have more than one pump and tank outfit through which they dis- 1280
pense gasoline products? A. No, sir, just one.

Q. Do you know about how many such equipments are under lease and loan agreements, and how many are loaned outright by the retailers of gasoline? A. How many here in the district?

Q. In this territory? A. How many are owned by the garages?

Q. Yes. A. I could not exactly say how many, but there is a good number of them.

Q. Could you make any fair estimate as to the number, in per cent or proportion? A. That are owned by the garages and the supply houses?

Q. Retailers, yes, generally, and those that are 1281
leased and loaned to such parties? A. To take them in both together, or just separately? I should judge there are about 150, maybe a little over, of pumps and tanks that are owned by the individuals.

Q. And about how many leased or loaned, either one? A. Maybe there are about 50 that have been put out here recently that I think were loaned out—what I understand were loaned out here recently.

Q. When you say you understand they were loaned out, on what do you base that estimate? A. What the people tell me.

1282 *Paul Himmelfarb, Cross*

Q. You mean the retailers? A. The retailers, yes.

Q. Under what circumstances have these parties told you of this fact? A. I went down to ask for their business.

Q. And it was in connection with that they told you? A. Yes.

Mr. Schekter: May I note my objection to that?

Examiner McCorkle: Yes; note the objection.

Mr. Zechiel: That is all.

1283

CROSS-EXAMINATION by Mr. Nesbitt:

Q. What is your position with the Penn Oil Company? A. I am president now.

Q. You have a well developed trade, have you not, in this locality? A. Yes, sir.

Q. How old is your company? A. Five years here in the district.

Q. During that five years you have built up one of the best trades in gasoline in the City of Washington? A. I have built it up, but I have not got it now.

1284

Q. Did you have it at one time? A. Yes, sir.

Q. Your business has fallen off, then, in the District of Columbia? A. It has, yes, sir.

Q. Has it fallen off in Philadelphia? A. No.

Q. Up until the time you gave up this practice of loaning and leasing pumps, had your trade fallen off? A. Yes, sir.

Q. So that the loss in trade that you have experienced did not coincide with your giving up this practice? A. How is that, sir?

Q. Your loss in trade here in the District of Columbia did not coincide with your giving up this practice

1285

of loaning and leasing pumps; is that true? (After a pause.) Perhaps I can make it plainer. Your loss in trade was not attributed by you to your giving up this practice of loaning and leasing pumps; is that true? A. Yes, I think it is. We gave up leasing pumps.

Q. Do you attribute your falling off in trade to that fact? A. We attribute to both, that we were simply compelled to give up the trade.

Q. Then do I understand you to say that the loss in trade that you have experienced has no connection whatever with this practice of loaning and leasing 1286
pumps? A. Well, we quit leasing pumps because we were compelled to give up the trade.

Q. I see. And you did not lose the trade because you gave up the practice of loaning the pumps. It was rather the reverse? A. I can only tell you we have lost the trade on account of having a bad market here, and when we could not take care of the trade we gave up leasing pumps or loaning out pumps.

Q. And your loss in trade had something to do with your purchase of the product you were going to market, rather than your actual marketing conditions? A. I cannot say the purchases were all bad, but the market here was bad; we had a very slow market here.

1287

Q. You considered it unprofitable business to continue your practice of loaning and leasing pumps? A. At that time, yes, sir.

Q. When you first came in there to the District of Columbia, you found this practice of loaning and leasing pumps, which is a way of getting customers, did you not? A. Yes, sir.

Q. And that is the way that you built up your trade here? A. Oh, no; that is not the way I built up the trade.

Q. That was one feature of it? A. It might have been one feature of it.

1288 *Paul Himmelfarb, Cross*

Q. Suppose you were going into a new territory now. Do you believe that that would be a convenient way of building up your trade there? A. No, I don't think so.

Q. Why not? A. For a good many reasons, that you cannot tell whether we will always put the gasoline in the tanks. I have had many cases where other concerns were putting in gasoline in our tanks.

Q. You stopped that practice, did you not? A. I have.

Q. Would not the same practice hold good else-
1289 where that has held good here in Washington, that you could build up your trade by this practice? A. I would have to see the territory before I could say.

Q. You would judge by local conditions? A. Yes, sir.

Q. How many people were marketing gasoline here in Washington at the time you came in? A. We were the fourth. There were three, and we were the fourth.

Q. How many are there now? A. About the same, except one little concern here.

Q. You were one of the last to come in? A. No, I was not the last. Another concern came in right after.

1290 Q. You were next to the last? A. Yes.

Q. Do you feel that you have your share of the gasoline business in this locality? A. No, sir, I feel that I have not. I have had it.

Q. You feel that the loss has been due to the marketing conditions that you were speaking of a while ago? A. Yes.

Mr. Nesbitt: That is all.

By Mr. Speer:

Q. As I understand, the marketing conditions here became such that there was not sufficient profit in the handling of gasoline? A. Yes, sir.

Q. And at the time you quit loaning and leasing pumps, you also quit selling gasoline to the retail trade? A. No; we stopped leasing pumps long before we gave up the trade. We held onto some of the trade. We are holding on yet.

Q. You still did sell some, but you quit pushing the gasoline business, did you not? A. Yes.

Q. You did not care to make a specialty of it because there was not enough in it? A. In the wholesale business.

Q. And necessarily that being true you quit leasing and loaning pumps? A. Yes. 1292

Mr. Speer: That is all.

By Mr. Schekter:

Q. Is your Penn Oil Company a corporation? A. Yes, sir.

Q. Who is Mr. Willenski? A. He is not in the corporation at all. He was working for us in Philadelphia.

Q. You say you have discontinued the practice of loaning pumps during the past three years? A. Yes, sir.

Q. Do you know of an instance in which your company loaned or gave away pumps? A. Not in the 1293 District.

Q. Anywhere? A. I don't know about Philadelphia; I don't think they did. If they did I instructed them not to.

Q. You have no personal familiarity with conditions in Philadelphia? A. Well, I have, and if they have loaned any pump and tank, then it was against my instructions. I instructed them not to do it.

Q. If they had done it you would know of it, would you not? A. No. I don't think I would.

1294 *Paul Himmelfarb, Cross*

Q. Who exercises personal supervision over the Philadelphia territory? A. My brother Harry.

Q. Harry Himmelfarb? A. Yes, sir.

Q. You don't know of your transactions with the Lincoln-Way garage, in Philadelphia? A. No, I don't.

Q. There is not any question in your mind that this pump equipment, the storage tank, pump and measuring device, is practically the only safe, the most modern and efficient method of the distribution of gasoline to the ultimate consumer? A. I cannot say that. I have had many cases where you think you are

1295 putting in a pump and tank to a consumer, and in many cases you have to either ask him to return it to you or let him buy gasoline elsewhere.

Q. I am afraid you did not understand my question, Mr. Himmelfarb. I mean as to the best way of distributing gasoline. Is it not true that this pump and equipment is today the best way of doing it, the best medium for the sale and distribution of gasoline to the consumer? A. You mean to get the business now?

Q. No, irrespective of business. I am talking now about the method of distribution? A. Oh, yes; yes, indeed.

1296 Q. There is no question about that. A. Of course, he has to get a tank to put the gasoline in. That is natural.

Q. And this measuring device, pump and storage tank, is the safest way to do it? A. Yes.

Q. And the most economical way? A. That is the only way, I think.

Q. In each instance you have the trade name of the particular company on the pump as evidencing the gasoline that is being sold? A. Yes.

Q. All the companies are selling gasoline under a trade name or a particular brand—take the At-

lantic Refining Company. A. Yes, they have got their name on the pump.

Q. That is the way they assure the public they are getting the Atlantic gasoline, is it not? A. No.

Q. Why do you say that? A. Because we have put in many—as I say, it is the same thing.

Q. What were you going to say about something you had done? You have done what? A. I did not say—I might have done it, too. In some cases where the people could not get service immediately they will call up a passing-by wagon, a truck and get a little gasoline or something. Some times they have a fall- 1298
ing out with the concern about credit, or something. Then they are not waiting exactly to straighten affairs out, and they get some gasoline.

Q. Those are exceptional instances in which a person would surreptitiously sell that product to another concern as the product of the Atlantic Refining Company.

Mr. Zechiel: We object to the word "surreptitiously."

By Mr. Schekter:

Q. Was it done openly, Mr. Himmelfarb? A. That 1299
a man would buy gasoline from—

Q. Buy from another concern and deliberately sell it as the product of the Atlantic Refining Company?

Mr. Zechiel: I object to the form of the question.

The Witness: No.

Mr. Schekter: The answer is "No." I don't know whether you want to strike it out or go over it again. That is all.

1300 *Geddings Cushman, Direct*

By Mr. Speer:

Q. While you quit pushing the sale of gasoline on account of the small profit that was in it, you did continue pushing the sale of your other products you were handling? A. No, we were only pushing the retail part of it.

Q. I mean other products. You were handling other products as well as gasoline? A. We do not go much to the lubricating oil end, only to the refined.

Q. Well, you continued selling refined oil? A. Yes,
1301 retail.

Mr. Speer: That is all.
Mr. Zechiel: That is all.
(Witness excused.)

GEDDINGS CUSHMAN was called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your name and address? A. Geddings Cushman; Aiken, South Carolina.

1302 Q. What is your business? A. I am an oil jobber, what you call an oil jobber. We deal in tank car lots, and buy and sell to the retail trade.

Q. You buy and sell to the retail trade? A. Yes.

Q. What is your territory? A. We have the western section of North Carolina, or South Carolina.

Q. The western portion of South Carolina? A. Yes, sir.

Q. Who are your competitors? A. The Standard Oil Company, Texas Oil Company, Gulf Refining Company.

Q. Do you know which Standard Company that is? A. The Standard of New Jersey.

Q. Do you also handle lubricants in connection with your business? A. Yes, sir.

Q. How long have you been with that company? A. For the last five years.

Q. Is the company older than that? A. That is all; we established it.

Q. Had you yourself had any experience in the oil business prior to that time? A. No.

Q. In connection with your oil business does your company engage in handling pumps and tanks used in its distribution? A. Yes, sir.

Q. Do you sell such equipment? A. I sold them 1304
for a while.

Q. While you were selling them, those that you did sell, were they sold at a reasonable margin of profit on the transaction? A. Yes, sir.

Q. Do you also or have you also, leased or loaned such equipments? A. Yes, sir.

Q. How long have you engaged in that practice? A. About the last two years or three.

Q. You are still doing it? A. Yes, still doing it.

Q. What was the occasion of your beginning the lease and loan practice? Which do you do, loan or lease? A. We loan.

Q. What was the occasion of you doing that? A. 1305
Our competitors forced us to go into that business.

Q. When you say "forced," what are the facts? A. They would take our business away if we did not do likewise. They would go to our customer and say, "If you handle our goods, or gas, we will loan you a pump and tank."

Q. If you know, what was the arrangement which your competitors entered into under these conditions? What were the facts about that? A. They would go to our customer and ask if they would not take the gasoline, and say to him, "If you will handle the gas

we will furnish you a tank absolutely free of cost to you, to sell gasoline for us at one cent a gallon profit."

Q. How did you come by this information? A. By the dealer with whom we were doing business.

Q. What was the nature of the conversations when you learned these facts? A. They came to us in an ordinary way and said, "Why, the Standard Oil Company has offered to put a tank in here and told us if we would handle their gas they would give us a tank absolutely free of charge, and we would have to pay for it only as we sold it." They also had each
1307 tank equipped with a meter and as the gas was distributed or sold out of it, out of that tank, at the end of each week they would pay for it.

Q. Was this experience a common experience in your field? A. A very common experience, yes.

Q. Would you say you had lost considerable business because of that practice? A. Yes, sir.

Q. You referred to the Standard Oil people. Are the same facts true in a general way with respect to the rest of your competitors? A. Yes, sir.

Q. What is your experience down in that territory, do the garages and retailers generally have installed more than one such equipment? A. Just one
1308 equipment, as a usual thing.

Q. What would you say about the relative number of leases and loans compared to outright ownership of such equipment? A. I believe that the lease and loan amounts to 80 or 90 per cent.

Q. And the rest are owned outright by the dealers? A. Owned outright.

Q. Do you believe that this practice of leasing and loaning oil tanks and pumps to customers at a nominal consideration, under a condition or understanding that the lessee would not use, in connection with such leased equipment, the oil products of any concern

other than that furnishing or leasing such equipment, is a sound business policy?

Mr. Speer: Objected to on the ground that it is incompetent, immaterial and irrelevant.

Examiner McCorkle: Note the objection. Let the witness proceed.

The Witness: Yes, sir, I think so.

By Mr. Zechiel:

Q. What are your reasons for that opinion? A. In the first place it has taken a tremendous investment 1310
for the small man to have to go out—

Q. Read my question again.

(The pending question was repeated by the stenographer, as above recorded.)

A. No, sir. I catch the point; I see. No, I don't think it is a good business policy.

Q. Now, my next question.

(The stenographer read as follows):

"Q. What are your reasons for that opinion?" A. Because it has taken such a tremendous investment for the small man to go out and buy this, and I believe if 1311
the man owned his own tank he would have a chance to go where he pleased. It would reduce the outlay of capital very much, and in the meantime give us a chance to fight for business on an equal basis.

Mr. Zechiel: That is all.

CROSS-EXAMINATION by Mr. Nesbitt:

Q. Your business is five years old? A. Just about, yes, sir.

Q. Is it a growing business? A. Yes, it is a growing business.

Q. If you were going into a new territory down there, expanding your business, would you feel that if you loaned and leased pumps that it would be an avenue to new business in that territory? A. That is the only way to get it now, if you go in there.

Q. Suppose you were going into a territory where another company was carrying on an established business in marketing the same product that you were seeking to market, would you believe that by loaning and leasing equipment you would have a means of entering that field in competition wth the other established
1313 business there? A. Well, yes. I think that would be a good idea. As I say, though, it is simply brought about by competitors doing the same thing. I would be forced to do that. I could not go in and ask for business because he is furnishing tanks himself.

Q. Suppose there was a company that had a service station built in a community where you wanted to go in and do business? A. Yes, sir.

Q. And they would necessarily have leased equipment there—and you wanted to enter that field. Do you believe that by loaning and leasing equipment in that field that you could enter there in competition with the established business? A. Yes, I think that would
1314 be the only way I could get in there, sir.

Q. It would require a considerable expenditure of capital on the part of your company to establish service stations? A. Yes, sir.

Q. This loaning and leasing equipment, would you consider a more economical method? A. Yes, sir.

Q. Of reaching customers? A. Yes, sir.

Q. Than by establishing service stations? A. Yes, sir.

Q. You are branching out into new territory in your section all the time, are you not? A. Yes, sir.

Mr. Nesbitt: I think that is all.

By Mr. Schekter:

Q. Mr. Cushman, what your competitors are doing is to loan this pump and equipment to the garage man or other retail dealer, through which he may sell the product of the particular competitor? A. Yes, sir.

Q. Is it your experience that the trade name or brand of the particular competitor is labeled in some way on the pump? A. Yes, sir.

Q. That in effect supersedes what was the practice some years ago of supplying the product in barrels or drums? A. Yes, sir. 1316

Q. Under the old practice the name of the company was labeled on the drums just as today it is labeled on the pump? A. Yes, sir.

Q. The Atlantic Refining Company is not a competitor of yours? A. No, sir.

Q. You don't know anything about its practice? A. No.

Mr. Schekter: That is all.

By Mr. Speer:

Q. In reference to the drums, while that practice was in force, the selling of it in drums, it was also the practice to loan those drums to the retailer, was it not? 1317

Mr. Zechiel: I want to object to the question. I do not believe Mr. Cushman's experience, as he testifies, reaches back that far. If he is able to speak from actual knowledge I have no objection to the question, but his testimony so far would not bear out that he has actual knowledge of that fact.

Examiner McCorkle: If he knows.

The Witness: I will give you the best idea about the matter that I can. Just about the time that we began business it was customary to make these shipments in drums. I admit that.

By Mr. Speer:

Q. And the retailer kept the drum until he emptied it? A. Yes, sir.

Q. Then he returned it to the seller? A. Yes, sir.

Q. And did not have to pay for any use of it? A. That is correct, sir.

1319 Q. That is all. A. Wait a minute. But they did charge 75 cents monthly rental after thirty days. Longer than thirty days they charged the purchaser 75 cents a month rental.

Q. That was largely to prevent them being kept overtime and not in use? A. Yes, I presume so.

Q. The seller was anxious to get them back? A. They wanted to keep that drum in transit within their thirty days.

Q. It was a penalty. If the man kept the drum, after he had emptied it, after thirty days, then he had to pay for keeping it lying there idle? A. Yes, sir.

By Mr. Schekter:

1320

Q. There is no question in your mind but what the pump and outfit is a far superior method of distribution than the old drum? A. Of course that is the best way. But as I said before, it required a tremendous outlay of capital for the small man to do it.

Q. At the same time you are perfectly free to compete in that way? A. I would rather not. I would rather get away from it if I could.

Q. I say, you are perfectly free to do it? A. Yes, sir.

By Mr. Speer:

Q. Suppose a man had to buy a tank wagon. That takes a good deal of money, to go into business? A. Yes, sir.

Q. This selling of oil requires considerable capital if you are going to do any business? A. Indeed it does.

Q. And if you branch out in additional business you have to get more equipment? A. Yes, sir.

Q. And that costs more money? A. Yes.

RE-DIRECT EXAMINATION by Mr. Zechiel: 1322

Q. Mr. Cushman, referring again to this hypothetical state of affairs to which Mr. Nesbitt directed your attention, where in a city community there are only service stations, and as to the method that might be used by a new company attempting to get business in that locality in competition with these service stations, what methods could be used in your experience to get into that territory? A. The only way I can suggest is soliciting business from a dealer if he has his own tank.

Q. Would such a dealer in your experience likely buy his own tank if shown the economical advantage 1323
of it? A. Yes. They do buy them in some places where they have no competition.

Q. Then leasing and loaning is not a necessary thing in order to get into that territory? A. No.

By Mr. Schekter:

Q. You do not mean that in your experience you do not find people who had locations, who were unwilling to invest in the cost of equipment to go into this business? A. Pardon me. What was your question.

1324 Q. In your experience you do not mean that you have not found persons who had located, who refused to make this investment in the cost of equipment? A. No.

Q. You have not found any such persons? A. No.

Q. In your territory? A. No.

Q. Have you at all tried to solicit the trade, or do you do that through others? A. Oh, yes.

Q. You do that personally? A. Yes.

Q. And in each case you have sold the property to
1325 him? A. No. You mean sell him the tank?

Q. Yes. A. No, I have not sold the tank.

Q. You mean he would not buy the tank? A. No, he would not buy it.

Q. And where he refused to buy it you refused to make the investment? A. Yes, sir.

Q. In that event it becomes necessary for you to adopt some alternative plan? A. Yes, sir.

Q. He might be made your agent on a commission or salary? A. Yes.

Q. You might do that? A. Yes.

Q. If your competitors did that the objection you have to the present system would prevail likewise? A.
1326 I have never had any objection other than I still go back to my same question, it takes so much money for us to handle it.

Q. That is the basic objection? A. Yes. I would rather if it could be to let that man buy his own tank and we take chances of getting his business.

Q. It is a question of whether you ought to pay for the means whereby you distribute your product, or whether he ought to pay for it? A. That is it. Naturally we try to save all we can.

1327

By Mr. Nesbitt:

Q. It is true, Mr. Cushman, is it not, that it is easier to introduce your product by approaching people in new territory with this leasing and loaning proposition? A. Oh, yes; that is a very easy way to get business. it at once appeals to prospects—when he thinks he has not got to make the investment.

Q. And when you are going into a new territory you find that a convenient and advantageous method of approach to business there, don't you? A. Yes, sir.

1328

Q. Is your investment in leased equipment out of proportion to your capital? A. No, sir.

Mr. Nesbitt: That is all.

By Mr. Zechiel:

Q. Do you also find it an economical method to get new business? A. No, I don't find it an economical method.

By Mr. Speer:

Q. Is it not more economical than if you had to go to the expense of establishing and building service stations? A. If we had to put a service station up it would probably, yes, sir.

1329

Q. That would be more expensive? A. Yes, sir. Of course, we solicit in smaller towns which do not require service stations.

Q. It would be good for you, for a little jobber, if the large companies were not allowed to put in service stations where they sell their product; you would have a better chance to get the business? A. That is probably true, yes, sir.

By Mr. Zechiel:

Q. Further about that service station, had you ever considered going into the service station business? A. Yes, sir.

Q. You have figured that over, have you? A. Yes, sir.

Q. If you were in a locality where centralized distribution were important, where you have a large gallonage that could be centralized in one location, what do you think of the economy of the service station to handle that business, as compared with the other?

1331 A. That would be economical, in that situation.

Mr. Zechiel: That is all.

(Witness excused.)

Mr. Zechiel: I think those are all the witnesses that are going to show up this morning. I want to reserve the right to introduce certain formal affairs of this sort. I think not all of the attorneys have appeared for the various respondents. I may want to show they were served with notice, and things of that sort. I am not certain whether formal evidence has been admitted in all the cases against all the respondents as to the practice itself. I think it

1332 has. But I want to reserve the right. I will not introduce any further evidence but just these formal matters.

Then we will adjourn to meet in New York, December 1st at 2 o'clock P. M., in the office of the Federal Trade Commission, at 20 West 38th Street, before an Examiner, to be designated by the Commission.

Thereupon, the further hearing in this matter was adjourned to meet in New York, Monday, December 1st, 1919, 2 o'clock P. M., in the office of the Federal Trade Commission.

New York, N. Y., Dec. 1, 1919, 1333
2 o'clock, P. M.

Before J. J. Dunham, Examiner.

Met pursuant to notice.

Appearances:

C. L. Zechiel and Joseph A. Burdeau, attorneys for the Federal Trade Commission.

Peter M. Speer, appearing for Standard Oil Company of New York.

J. H. Hayes, appearing for Standard Oil Company of New Jersey. 1334

James L. Nesbitt, appearing for the Texas Company.

Gale L. Schekter, appearing for Atlantic Refining Company.

Examiner Dunham: You may proceed, gentlemen.

Mr. Zechiel: I offer in evidence notice of taking of testimony addressed to the Maloney Oil & Manufacturing Company, Respondent in Docket No. 309, mailed to the respondent company at their offices, Scranton, Pa., by the chief counsel, Claude R. Porter, Federal Trade Commission, in conjunction with letter dated November 10, 1919, addressed to Mr. James M. Collins, General Manager, Maloney Oil & Manufacturing Company, Pa., which letter advises the respondent company of the enclosure, notice of taking testimony, and of the joining of various respondents for the purpose of taking testimony in the City of New York. 1335

The paper was thereupon received in evidence, marked Commission's Exhibit No. 2, and is forwarded herewith.

Mr. Zechiel: Mr. Examiner, Mr. Hayes wants to enter a statement of record.

Mr. Hayes: Mr. Zechiel, government counsel, has asked me to make a stipulation or admission as to the control of the Gilbert & Barker Pump Company. Testimony adduced before the Examiner connected the Standard Company of New York as being the controlling factor in the G. & B. Company. The Standard Oil Company of New Jersey owns the controlling stock in the G. & B. Company. So far as I
1337 know, the Standard Oil Company of New York has no interest in it.

Mr. Nesbitt: Is that all, Mr. Zechiel?

Mr. Zechiel: Yes.

Mr. Nesbitt: I will call Mr. Gatchell.

FREDERICK D. GATCHELL was thereupon called as a witness, having been duly sworn, testified as follows:

Direct-examination by Mr. Nesbitt:

Q. What is your business? A. Assistant manager, sales department, the Texas Company, oil busi-
1338 ness.

Q. How long have you been with the Texas Company? A. Ten years.

Q. Have you been in that capacity with them during that ten years? A. Not the entire ten years, no, sir.

Q. How many years have you served in the capacity of assistant sales manager? A. Between five and six years; six years next April.

Q. But you have been in the oil business for ten years; is that correct? A. Yes.

Q. And all of that period you have been with the Texas Company A. Yes, sir.

Q. Is the Texas Company engaged in the practice of leasing tanks and pumps at a nominal rental? A. Yes, sir.

Q. Do you know how long the Texas Company has been engaged in that practice? A. I should say four or five years; maybe three or four years—around four years I should say.

Q. In engaging in this practice of leasing equipments at a nominal rental, are the installations made within a near radius of your refined stations, or are 1340
they separated some distance from your refined stations? A. Generally speaking, within what we call a delivery radius of a certain refined station. Of course there may be another refined station located a certain distance away which might serve that pump, if necessary. Sometimes our stations are close enough together for that.

Q. Perhaps you had better tell what you mean by a refined station? A. A refined station is a station, as we term it, which is located in a city or town into which we receive the products in bulk, or in tank cars, and redistribute those products by tank wagon, tank truck or other method, to the locality being served 1341
by that refined station. It indicates the main station or the bulk station at a point. Sometimes there is more than one, in a large locality.

Q. You deliver, then, from your refined stations to these installations by truck; is that correct? A. Yes, sir.

Q. Is it true that where a number of installations of this sort are made, in a community, that the amount of storage available is increased?

1342 *Frederick D. Gatchell, Direct*

Mr. Burdeau: That is objected to, as leading and suggestive.

Mr. Nesbitt: Mr. Examiner, I quite concede that the question is leading. I also think I may say that an objection to a question as leading is a pretty weak objection to it anyway. I shall be very glad to reframe that question, however.

Mr. Burdeau: The answer will go in, anyhow, under our practice; so that it is purely a formal objection.

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The Witness: Shall I answer now?

Mr. Nesbitt: Wait until the Examiner rules.

Examiner Dunham: Gentlemen, that you may appreciate my estimate of all these matters, it is my estimate, my individual opinion, that any question asked ought to be answered, though it remotely refers to the matter in dispute, in this sort of an investigation, for the reason that, though it might not be strictly pertinent right then, before the hearings all close, some subsequent happening might bring it within the rule. So I shall rule that any

1344

question asked shall be answered, and the objection will be noted, so that whoever passes on it afterward may have the benefit of all the proof that is offered. So you may proceed, so far as this hearing is concerned, with that idea. At the same time, I would be glad to have both parties be as economical of time, and ask as few questions that would be objectionable, as you possibly can. I think, however, that is the safe rule in an investigation of this sort, to allow all questions asked to be answered, and

let the objection be noted. So you may answer the question.

The Witness.: What was the question?

(The reporter repeated the question as follows):

"Q. Is it true that where a number of installations of this sort are made, in a community, that the amount of storage available is increased?"

The Witness: Yes.

By Mr. Nesbitt:

Q. How do you carry, on your own books, equipments of this sort? A. We carry them as an investment item, as investments for equipment, or facilities for doing business.

Q. Do you carry them the same as you carry tank trucks? A. Yes, sir.

Q. When you lease or loan an equipment at a nominal rental, do you identify the trade name or trademark of the Texas Company with the product sold through that pump and tank? A. Always.

Q. How many installations of equipment are made under how many different arrangements by the Texas Company? This is one arrangement. What are the other arrangements under which installations are made? A. Well, we install this type of equipment in what we call our own filling stations or service stations, and this type of equipment, of course, is used quite generally in distributing gasoline to the public under all kinds of circumstances. I do not just understand what you mean by "install."

Q. You have named two arrangements under which installations are made: One lease and loan, at a nominal rental? A. Yes.

1348 *Frederick D. Gatchell, Direct*

Q. The other one a filling station? A. Yes.

Q. Are there any others? A. It may be possible that we have a very few what is known as agency arrangements, whereby we furnish the pump and tank equipments and the parties are made our agents on the commission or salary basis.

Q. Do you sell any pumps and tanks? A. We have no regular organization for selling pump and tank equipments. We have, in the past, sold a very limited number to people who might ask us to buy them for them, through contracts which we had with the pump
1349 and tank companies.

Q. Are you delivering to any people who own their own tanks? A. Yes, sir.

Examiner Dunham: I take it, Mr. Nesbitt, that you mean are they delivering oil or gasoline?

Mr. Nesbitt: Yes; gasoline.

By Mr. Nesbitt:

Q. Are those customers that own their own equipments, as a class, permanent customers? A. As a class, I would say they were.

1350 Q. Is there any greater percentage of changing, or is there any greater percentage of loss of such customers than there is among those to whom leases are made on nominal rental of these equipments? A. In my opinion, no.

Q. Out of these three arrangements under which installations of equipments are made, which is the more economical method of marketing? A. I should say the loaning at nominal rental of pump and tank equipment.

Q. During the period that you have been with the Texas Company in the position of assistant manager

of sales, has the number of competitors in your territory increased or decreased? A. Increased.

Q. In cases where you have made installations under lease at a nominal rental of tanks and pumps, have those installations been profitable or unprofitable? A. Generally profitable. I would say practically all profitable; determining the question of profitable by several different factors; that is several different factors are involved in the statement "profitable"—the amount of business done, the ability to serve the public at that point, and the advertising feature, and several considerations.

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Q. Do you maintain, now, under lease and loan, any installations that are unprofitable? A. Well, that is not our aim to maintain any that are unprofitable. There, again, the degree of profit comes in. One pump, of course, will produce, if you measure it in business, more profit than some other pump; but, generally speaking, we do not put in installations that are not properly termed profitable to the company. As we invest our money, we expect to get a certain amount of profit for that investment.

Q. Is it your judgment that in any of the territory under your jurisdiction there are more installations of pumps and tanks than the trade requires? A. No, sir; I should say to the contrary. 1353

Q. Is it your opinion that the practice of loaning and leasing pumps is or is not a means of bringing competition into a new territory? A. I think the practice brings in competition.

Q. From whom do you buy your equipments that you lease and loan under this practice? A. From a number of different companies.

Q. Can you name them? A. S. F. Bowser & Company; Wayne Pump & Tank Company; Rapid Day-

1354 *Frederick D. Gatchell, Direct*

ton; Guarantee Visible Measure; Tokheim. I will say, however, that the great majority of our equipments are bought from the Bowser Company.

Q. About how large an investment does the Texas Company have in these equipments that it leases and loans at a nominal rental? A. You mean per equipment, or total investment?

Q. Total. A. Well, it varies from year to year. You mean the total investment of all the pump and tank equipments that we have out?

Q. Yes. A. Well, now, I cannot give you the exact
1355 figures.

Q. I just want something approximate. I did not know whether you knew or not? A. I should say three-quarters of a million dollars to a million dollars. That includes installations and everything.

Examiner Dunham: Mr. Nesbitt, does that refer to the territory that he controls—that answer?

Mr. Nesbitt: That was what I was asking, with a view to. I was going to bring out, at the close of his testimony, just the territory that he had under jurisdiction. I did not cover it
1356 at first.

By Mr. Nesbitt:

Q. What is the cost of these installations of tanks and pumps? A. Just what do you mean?

Q. A single installation? A. The approximate average cost?

Q. Yes? A. There are two classes of pump and tank equipment generally used: The one-gallon stroke, and the five-gallon stroke pump, and there is a little difference in the cost. I would say the one-gallon stroke pump, with a ten barrel tank, the average

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would run somewhere around $250 to $300 installed, under ordinary circumstances; and the five-gallon stroke pump say from $300 to $400 installed, for the same size storage tank. That varies, however, in different localities, on account of the character of the installation.

Q. In buying these equipments, how do you handle them as regards shipment and storage and installation? A. We buy them through our regular purchasing channels, our purchasing department, and most of them are shipped in carload lots direct from the factories into our own storage in the different districts; for in- 1358
stance, at Boston, New York, Philadelphia, Norfolk, etc., and then we redistribute them from there to our customers.

Q. If this practice of leasing pumps at a nominal rental were enjoined, do you believe that the number of installations of tanks and pumps would be decreased? A. No, sir; I do not. I cannot see how they can be decreased and take care of the public demand for gasoline. Some method will have to be devised to use the pump and tank equipment.

Q. When you first engaged in the oil business, what was the facility used by oil companies for dispensing gasoline to the immediate consumer? A. Various. 1359
When I first went into the oil business, say ten years ago, the garage man was handling practically all of the distribution of gasoline directly to the public, and he had various devices for actually dishing that gasoline out to the public, such as storage consisting of steel drums and above-ground tanks located in his garage, from which he drew the gasoline in measures or other similar devices. There were, even back ten years ago, I think, certain crude pump and tank outfits, so-called, but I do not think they were anywhere near

as complete and adequate as the equipment of today.

Q. Do you regard the modern tank and pump equipment as a necessary device to meet the trade? A. Absolutely; that, or some better or similar device which has not yet come to my attention.

Q. Do you believe that further increase in installations of tanks and pumps, if you have a judgment on the matter, will be necessary to meet the demand for gasoline in the future? A. My belief is that the facilities for getting the gasoline to the public in in-
1361 creasing quantities required by the public, have not kept pace with the demand for such service, except in, possibly, some few places. Generally speaking I consider that the enormous growth in the automobile industry is going to necessitate further and broader distribution of the gasoline facilities.

Q. Do you make these installations, under these lease agreements, in particular territories, or is it a general practice? A. Quite general.

Q. Are those installations confined in any measure to towns and cities, or are they made in the country as well? A. In the country as well.

Q. What territory is under your jurisdiction? A.
1362 All that territory north of the South Carolina line and east of the Mississippi River, extending up to the Canadian Border.

Q. Is the Texas Company engaged in business in all of those states, included in that area? A. No; not in all of them. I can give you, by states, if you prefer, just what the territory is. I said I had jurisdiction over that territory. That does not mean that we are doing business in all of those places. I do not think we are doing business in Kentucky for example.

Q. Tennessee? A. Tennessee is in the southern territory. I should say with the exception of Kentucky

we are doing business in all the other states within that territory.

Q. By "doing business," do you mean that you are marketing your product to the ultimate consumer in all of those states? A. No.

Q. That is, marketing the gasoline to the ultimate consumer? A. Outside of Kentucky, we are marketing to the consumer ultimately, but through what we call, in some instances, distributors. They are not our own station facilities. They are owned and operated by what we call distributors, but we sell the product to them outright, and they market it under 1364
our trade-mark brand.

Q. What I am wanting to get at is, in about how many states in your territory does the practice apply? A. Let me give you the states.

Q. All right. A. Starting with Maine, New Hampshire, Vermont, Rhode Island, Connecticut, Massachusetts, New York, Pennsylvania, Ohio, Delaware, New Jersey, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, Indiana, Illinois, Michigan, Wisconsin, Kansas—we have Kansas City on one side, of the river, and the southern territory has it on the other, and Missouri.

Q. Mr. Gatchell, your business does not cover the 1365
whole territory in each of these states named, does it? A. What do you mean by covering the whole territory?

Q. I mean do you consider that you are doing business all through each of those states? A. Oh, by no means. I want it understood that this list of states given is states in which we have some business. Our principal business, you might say, is along the Atlantic Seaboard and in the New England states, and states like North Carolina and Virginia and places like that. We only have one district which I have any-

thing to do with that is back from the Seaboard, and that is the Chicago district. We only operate eleven states in that district.

Q. Are you extending your business in this territory now? A. Yes, sir.

Q. Is this practice of leasing pumps at a nominal rental used by you as a method for extending your business in this area? A. Yes, sir.

Q. I think I have already asked you this question, but I want to make certain of it: Do you regard this leasing method an economical method of pushing your
1367 trade and extending your business? A. Yes, sir.

Q. In purchasing these equipments from the equipment manufacturers, are you required to make any agreement, by them, as to the method by which you will place those equipments? A. None whatever. You mean as far as restricting us is concerned?

Q. Yes, are you restricted in any way as to your handling of those equipments? A. Not at all.

Q. Are you allowed to resell Bowser equipments? A. Yes, sir.

Q. Have you had any difficulty in getting all the equipments that your company needs? A. Yes, sir.

Q. To what period of time does your answer apply?
1368 I mean, recently or some time ago? A. Particularly to the last nine months.

Q. Have you any unfilled orders, at the present time, for equipments? A. I cannot testify directly as to that, because I am not in close enough touch with the purchasing department. I know that, generally speaking, we have been delayed very materially in the equipments which we have ordered. Sometimes we have been several weeks or months before we could get the equipments that we ordered. That applies to all pump and tank companies that I know of.

Q. Do you know, Mr. Gatchell, whether with any of the companies you have dealt with before, you could get an order filled immediately for equipment? A. I should not know just exactly how to answer that. You say "before"; what do you mean?

Q. I mean from any of the companies from whom you have heretofore bought equipments, could you go to them now, do you know, and get an order filled at once? A. I do not know, as an absolute fact, but my impression is that I could not.

Q. You have already testified, have you not, that your purchases of equipments are direct from the 1370 manufacturer? A. Yes; direct from the manufacturer.

Q. Mr. Gatchell, what would be your estimate of an average cost of the so-called filling stations or service stations? A. Do you mean as regards our price, or the filling stations—

Q. I suppose it must vary in different localities; but some general average is what I am asking for. A. I can testify as to that in regard to our own practice pretty closely, and I can give you a rough guess on what I think the other people are spending for them, if that will answer the question.

Q. Just state, with those facts in mind, what you 1371 believe to be the average cost of a filling station. A. I should say from $8,000 to $15,000. That is what you might call an ordinary filling station. There are filling stations that cost a great deal more money than that; but that is about an average of our practice, on what filling stations we have put up. That is an average. Please emphasize that. That is a general average.

Q. What does that include—the purchase price of the ground and the cost of the construction? A. Sometimes it includes the ground and sometimes it

1372 *Frederick D. Gatchell, Cross*

does not. Sometimes the ground is leased. It includes the filling station building always, and certain pump and tank equipment, and driveways, and everything that is necessary to make a complete outfit.

Q. In those filling stations, are these equipments installed? A. Oh, yes. When you say "these equipments," you refer to the pump and tank?

Q. Yes. A. Yes; that is the only method I know of vending gasoline now, through pump and tank equipment.

1373 Q. I asked you some time ago, Mr. Gatchell, whether you know if an order now placed by you with any of the companies with whom you have been purchasing equipments heretofore—whether you knew if such order would be promptly filled, and your answer was in the negative? A. My answer was that I could not say absolutely from direct knowledge, but my impression was that it would not be filled.

Q. What was the reason for your answer, that you think it would not be promptly filled? A. Because they have all got so much business that they cannot fill the orders they have got now.

Mr. Nesbitt: That is all.

1374 *CROSS-EXAMINATION by Mr. Zechiel:*

Q. How many installations under these lease contracts do you have, about? A. I cannot say exactly on that. I can give you an estimate or an approximation, if you wish it.

Q. As nearly as you can. A. I could give you an answer if I looked up our records.

Q. That is not necessary. I am not that particular. I just want it approximately. A. I should say approximately 2,000, possibly.

Q. What per cent of your business is done through such installations? A. When you say "what per cent of our business" is done through such installations, do you mean in regard to—for instance we do a large business, as all companies do, in tank car shipments direct to customers, that do not go through any facilities at all, except our loaning facilities at the terminal. I want to make my answer clear, whether you want that included or not.

Q. Let us talk about retailers? A. Oh, retailers?

Q. Yes. A. I should say ninety per cent.

Q. You do not do much business through customers 1376
who own their own equipment? A. I understood you to mean what percentage of business is done through pump and tank equipments.

Q. I will repeat my question: What per cent of your business is done through leased equipments, referring to your business with retailers? A. Oh, I should say, under that question, maybe sixty per cent, or sixty-five per cent.

Q. Sixty or sixty-five per cent? A. Yes.

Q. Through what outlet does the remainder go? A. Through pump and tank equipment that is owned by others than ourselves, and to manufacturing concerns who have facilities of their own, cleaning and 1377
dyeing establishments.

Q. I thought we had agreed that we would limit this to retailers. Are you still thinking of retailers? A. No. Then I will say through our own equipment, or through equipment owned by other people—

Mr. Speer: When you say that, what is your percentage?

The Witness: I said sixty or sixty-five per cent went through equipments leased by us.

Examiner Dunham: Mr. Witness, I do not know whether counsel intended to include those that were

leased for a nominal amount and those that were loaned. It seems there are two classes: Some of them were loaned and some of them you let them have for a nominal rent?

Mr. Zechiel: As far as this examination is concerned, Mr. Examiner, we are referring to either one, without distinction. As a matter of fact, I think they lease them all.

Mr. Nesbitt: It is all under the lease agreement.

1379 Examiner Dunham: You intend your answer to mean that the sixty, or sixty-five per cent, is distributed through the tanks that are leased or loaned?

The Witness: Yes.

Examiner Dunham: I think that is clear.

The Witness: I have no figures before me. You may ask me some questions in this connection that I will give you as nearly approximate answers to as I can, but I may be fifteen or twenty per cent off on a thing of this kind. However, that is my impression.

Examiner Dunham: I take it that an answer of that sort could only be approximately correct.

The Witness: That is what I am trying to an-

1380 swer.

By Mr. Zechiel:

Q. Now, you say, in your last answer to my question, in answer to the question through what facilities or avenues you distribute the balance, you said through pumps owned by the retailers themselves and through your own equipment. To what were you referring when you said your own equipment? A. I mean equipment leased or loaned by us, or equipment installed at our regular filling stations or service stations, and so forth.

Q. About what per cent is that? A. I said sixty-five per cent, I thought, was vended through equip-

ment leased or loaned by us; and naturally the rest would be, making one hundred per cent, through facilities owned by some one else.

Q. I rather doubt whether that is true, even though it seems to be against yourself to say so. I think you mean to say the rest is through your service stations, owned by you, and through pumps owned by other people; is that right? Let us get this right. There are three avenues of distribution. A. Yes, sir.

Q. You have leased and loaned pumps? A. Yes, sir.

Q. And you have pumps owned by somebody else? 1382
A. Yes.

Q. And you have your service stations? A. Yes.

Q. All right. Under lease and loan, what percentage do you distribute? A. I should say sixty-five per cent.

Q. Now, through pumps owned by somebody else? A. You say lease and loan; that does not include our own filling station equipment. Do you want to treat each one of those three classes separately?

Q. Yes, I am trying to get them into three groups. A. Let me see if I can get them into three groups, then. I would say sixty or sixty-five per cent lease and loan equipment; ten to fifteen per cent through 1383
our own station facilities, filling stations and service stations; and the balance through facilities owned by others than ourselves.

Q. Where do you do business in Ohio? A. Youngstown.

Q. Is that the only station you have there? A. That is the only station we own ourselves. We have several what we term distributors in Ohio.

Q. How large a business do you do in the State of Ohio? A. Is that a question that I have got to answer—how much business we do in the State of

1384 *Frederick D. Gatchell, Cross*

Ohio? I do not know myself, but I was wondering whether I had to answer that. I do not know, as a matter of fact.

Mr. Nesbitt: Mr. Zechiel does not mean that.

Mr. Zechiel: No. As a matter of fact, the question I am asking has nothing to do with your case, I think.

Mr. Nesbitt: He just wants general information.

Mr. Zechiel: I am getting this general information
1385 becouse of several matters of this sort, and I thought I would ask you while you were here.

The Witness: As a matter of fact, our largest business in Youngstown is lubricating business, and has nothing to do with gasoline at all. We only do, I should say, 200,000 gallons a month in gasoline at Youngstown.

By Mr. Zechiel:

Q. You do not do very much business outside of Youngstown in Ohio? A. No.

Q. So that you are not, really, very actively engaged in the State of Ohio? A. No.

1386 Q. But in all the states you have named you do lease and loan pumps? A. No, I do not say that.

Q. I am asking you. A. I said we did business. I really cannot answer that. I do not think we do, as a matter of fact, in all these states.

Q. Do you know in what states you do engage in this practice? A. If this will answer your question, I can say that ninety-eight or ninety-nine per cent of the lease and loan pump and tank equipments, as far as we are concerned, has been done in the New England states, New York, Pennsylvania, Delaware, New Jersey, North Carolina, Virginia, Maryland, the

District of Columbia; in other words, the border states.

Q. About how much of your business is done in those states? What percentage of your business? A. I should say that seventy-five or eighty per cent of our total business is in those states enumerated above. This applies, all the while, to retail business, does it not?

Q. Yes; we are talking about the business that has direct connection with leasing and loaning of pumps. A. All right; and this only refers to gasoline?

Q. So far, only to gasoline. A. Yes. 1388

Q. You say you bought these pumps, and then stored them in warehouses in the various states, and sell your orders out of those warehouses. In filling those orders, do you ever carry the pumps and equipments across the state line? A. Yes. I said, I think, if you will read my answer, generally we do that; that is our practice generally. We have, on occasion a rush order, or something, and ship a pump and tank equipment direct from the factory to some individual location in some state, which necessitates carrying it across the border.

Q. To what extent do you carry from your own storage warehouses across state lines? A. In very 1389
few cases. You mean the pumps, or our product?

Q. I am talking about the pumps, now. A. I will have to qualify that by saying that in the majority of cases we do not; but we do sometimes. I thought you referred to our product.

Q. I am talking about the pumps, at present. A. All right.

Q. Just how do you handle these pumps when you have them shipped in to you? I want that rather in detail. I want to get a picture of it. A. How do we handle them?

1390 Q. Yes. Just what is the mechanical process from the time you order a pump until it is finally installed with the retailer? A. We place our order with the pump and tank people for, say, a carload of pumps. We generally have a contract with the pump and tank people to supply us so many pumps over a certain period of time, and we draw against that order as we see fit, asking them to ship a certain number of pump and tank equipments to, say, for example, Boston. We have a warehouse at Boston, and they ship them in a car, and we unload them at our warehouse there,
1391 and put them in stock, in storage. That gets the pumps on the ground there. Now, do you want to develop how they are taken out?

Q. Yes; go right ahead. A. We have agents, local agents, in all towns where we do business. We have salesmen, and possibly somebody will call on the local agent and say they want to distribute gasoline, or want to open up a station for the distribution of gasoline, or we may be selling a man lubricating oil, or something, or one of our representatives is there, and the question is brought up either by the agent or by the party who wants the pump and tank equipment and it leads to negotiations for the placing of a pump
1392 and tank equipment to handle our product, and then the request is sent into the Boston district office, and from there it is sent down to the general office in New York, and it is either approved or disapproved, and if it is approved the pump and tank equipment is taken out of the stock and shipped to the man's place, or taken on a truck to the man's place, if it is a nearby point, and then our installation force goes around and installs it.

Q. When you store these, do you store them in the same wrappings and gratings in which they are sent to you from the factory? A. Of my own knowledge I cannot testify as to that.

Q. What is your belief about it? A. My belief is that we do; because it is easier to ship them out again the way they come in than it is to unpack them.

Q. Now, as to your oil products. Are you the owners of fields, developing fields yourself—the Texas Company—if you know? A. Yes; I think we are.

Mr. Hayes: There is no doubt about that, is there?

The Witness: No, sir.

By Mr. Zechiel:

Q. You also have refineries, have you not? A. Yes. 1394

Q. Where are your refineries located? A. Port Arthur, Texas, Tulsa, Oklahoma, and Gates.

Q. Gates is where? A. Texas; Lockport, Illinois; Port Natchez, Texas. Those are our principal refineries.

Q. How do you get your products to the refineries from the field? A. Most of them by pipe line.

Q. Some of it in tank car lots? A. Some of it. For instance, our Lockport refinery gets all of its product in tank cars.

Q. And when it leaves the refinery, how does it leave? A. In tank cars, or tank car barge, or in large tank steamers. 1395

Q. You send some by rail in tank car lots, I presume, do you? A. Yes; we ship out by rail; but take it at Port Arthur refineries, for instance, and that is the supply for all of these Atlantic Coast points, and that stuff comes up in tank steamers.

Q. When it gets off the steamer? A. Then it goes into what we call terminals; that is, the point where the steamer discharges its cargo, the bulk cargo, into large tanks at the terminal; and from there the tank

cars are loaded out to the distributing stations or the refined stations that I described before.

Q. And these refined stations, just what are they, again—physically, I am talking about now? A. They consist, depending upon the size of the station built and required, of local bulk tankage, from which this tank car shipment which I just described as moving from the terminal is unloaded again into the local storage, and from the local storage is loaded into tank trucks.

Q. When you say it is unloaded, do you mean the
1397 tank is unloaded, or the goods, the gasoline itself is unloaded? A. The gasoline itself is unloaded.

Q. Is placed in another tank? A. Yes. For instance, the ordinary small station tankage will hold, say, 18,000 to 25,000 gallons, and a tank car holds about 8,000 gallons. That is pumped from the tank car into the local storage. That station, therefore, consists generally of a lubricating warehouse and pumps, office, garage and of course if horses are used, a stable. That is the local plant, you might say, out of which the gasoline goes to be distributed through these pump and tank equipments.

Q. To the retailers? A. Yes. As a matter of
1398 fact, if you want to know what we consider a complete outfit, we actually include in an outfit these pump and tank equipments; that is, while they are not on the station property, they become part of our investment at that station. They are not on the property itself, but they become part of our investment for that station, the local station.

Q. That is, when you think of going into a new area, a new territory, you include as a part of your prospective investment, a certain number of pump and tank outfits? A. Yes, sir.

Q. You also deal in lubricating oil? A. Yes, sir.

Q. How is that handled? A. You mean with respect to the retail dealer?

Q. I just asked you to describe the gasoline business, and how you handle your lubricating oil is my present question. A. Lubricating oil, except to the largest agents where we also have storage for lubricating oil, is generally shipped out of these terminals in wooden or steel drums.

Q. Are they shipped across the state lines, the lubricating products? A. Oh, yes.

Q. In the steel tanks or containers? A. Yes; anywhere. 1400

Q. Is it or is it not a fact that you sell the lubricants in those containers that you ship across the state line? A. No. In fact, just to the contrary. Many times we retain ownership of those containers.

Q. No; you do not get my question.

(The reporter repeated the question as above recorded.)

The Witness: I thought you asked whether we sold the containers also.

By Mr. Zechiel:

Q. No. A. Of course we sell the lubricants that 1401
are shipped in those containers. We sell the lubricants.

Q. Who are your competitors in this eastern territory? A. Do you want me to name all the competitors that I can think of?

Q. No; just your main competitors here in this eastern territory. A. The Standard Oil Company of New York; the Standard Oil Company of New Jersey; the Gulf Refining Company; the Atlantic Refining Company, the Sinclair Company; the Sun Company. If you want the principal competitors, those are the ones.

1402 *Frederick D. Gatchell, Cross*

Q. What is the capitalization of your company? A. The present capitalization, I believe, is $130,000,000 recently increased from $80,000,000 to $130,000,000.

Mr. Nesbitt: From $85,000,000 to $140,000,000. The increase has not become effective yet. The capitalization at the present time is $85,000,000.

By Mr. Zechiel:

1403 Q. Do you also have agency agreements with your customers? A. Relating to pump and tank equipments?

Q. Yes. A. We have a very few, but it is not our general practice at the present time.

Q. Why do you use the lease and loan system in preference to the agency system? A. Because we consider it more economical than operating agencies all over the country.

Q. Why is that? A. If you appoint an agent, you have got to go through certain accounting methods and one thing and another that are quite burdensome at times, especially involving a small business. For instance, if a man is an agent of ours, he has to send
1404 in reports; he is handling our product, that belongs to us, and he has to send in reports showing what he is doing with that product, in the way of many daily reports and weekly reports and monthly reports, and things like that, that our accounting department requires. If a man buys our product outright and distributes it through facilities offered by us, the product belongs to him, and after we sell it and get our money, we do not have to bother with it any more. It is a much more economical way, and we have considered it very much to be desired.

Q. You never tried to sell these equipments, as a practice, did you? A. No, sir; we have never maintained any sales organization for the sale of pump and tank equipments.

Q. This twenty-five per cent of customers that you have that own their own equipment, you testified that they are practically as continuous as those who have your leased equipment A. I say so, yes, sir.

Q. What advantage is it to you to have a leased equipment rather than to do business through pumps owned by the customers themselves? A. No advantage whatever. 1406

Q. Is it not a fact that the largest per cent of your lease installations are made in the more highly competitive areas in which you are engaged in business? A. No, sir; I would not say so. We install pump and tank equipments where we have no competition at all, sometimes.

Q. Is that a common practice? A. It is not common, because there are very few points where there is no competition.

Q. But there are a great many points that are more highly competitive than others, are there not? A. Yes; undoubtedly.

Q. Do you establish pumps as freely under the lease 1407
and loan agreement in those lesser competitive areas? A. I do not think we discriminate at all, when we want distribution in some place. Whether there is competition there or not, we use the pump and tank equipment to get the proper distribution of our gasoline to the public.

Q. Then your purpose in using the lease and loan is wholly one in order to distribute your gallonage? A. Merely one of facility, to offer facilities. Yes, I will answer it is. Yes—to distribute gallonage.

Q. In your lease and loan outfit, what percentage of the retailers product where you have lease and loan outfits passes through your equipment, and what percentage is the property of some other company, a competitor of yours? A. Where there is only one pump and tank equipment, if that belongs to us, it is our trade-mark brand gasoline, we assume that all of our product passes through there.

Q. Well, now, as a matter of fact, if you know? You say you assume. A. That is our belief, or intention, to have our product pass through entirely.

1409 Q. So far as you know, are you successful? A. I think generally speaking we are, yes.

Q. Why do you say that the lease or loan method of doing this business is the most economical method? A. Because I believe it is.

Q. Compared with what methods is that true? A. Compared with, say, establishing agencies for the handling of the product in the same identical method except that the product belongs to us, and except that we have to hedge the thing around with extensive safeguards in the way of bookkeeping and other cumbersome methods.

Q. Compared with business through equipments that are owned by the garage man himself, what would

1410 you say? A. Comparing what—lease and loan equipments?

Q. Yes. A. The only difference there is is in the original investment. In other words, you might say, naturally, if we could get the distribution we want, in the places we want it, we do not care whether the man buys the pump or whether we furnish it to him.

Q. You don't care. Is that exactly the truth, that you do not care? A. That is what I said, yes. We would just as leave furnish it to him, if he wants to buy his equipment, as not.

Q. Then there is no economic superiority of an equipment owned by the retailer himself over your lease and loan proposition, so far as you are concerned; you would just as lief give him the pump and tank for his use, as to have them use his own equipment? A. I said provided we could not get an installation at a certain point where we wanted to.

Q. Just note the question, please.

(The reporter repeated the question as above recorded.)

Examiner Dunham: Give us as clear cut an answer to that as you can. 1412

Mr. Hayes: It is a sort of a double barrelled question.

By Mr. Zechiel:

Q. Yes. You can answer twice. Separate the question, if you prefer. Answer the first one. I thought the second was putting the question a little plainer than the first. That is the reason I repeated it. A. I will say, as regards the first part of it, that it makes no difference to us if we can get a customer who has his own pump and tank equipment, we will supply him gladly. On the other hand, as to the second part of the question, if we cannot get a certain location or a 1413 certain distribution that we want, we will furnish equipment to open up a location of that kind.

Q. Now, my exact question is: Which do you prefer? A. I will say we prefer neither. I am neutral on the question. If the pump and tank is there and owned by the dealer, or garage man, all well and good: but if it is not, and the location is such as we want, we will consider it a facility that we will supply.

Q. Then suppose you had an opportunity to sell such an equipment, or some pump company had an opportunity to sell an equipment to a prospective cus-

tomer; would you just as lief furnish him that pump and tank free as to sell the equipment to your prospective customer? A. We do not sell pump and tank equipments except on request of the prospective customer himself, if he wants to buy it.

Q. Suppose he requests it, then? A. If he requests it, yes, we would sell him the pump and tank equipment.

Q. Now, which would you prefer doing? A. Which would I prefer doing?

Q. Yes. Give him one or sell him one? A. If he
1415 would buy it, I would be glad to have him buy it.

Q. You would prefer doing that? I know you would be glad to have it, but would you prefer doing it, or would you rather lease and loan him one under your agreement? A. I think I would rather have him buy the outfit, if he would buy it.

Q. Then so far as you are concerned, the most economic method of marketing your product is to market it through pumps owned by the retailer himself; isn't that true? A. Yes.

Q. On direct-examination you said that you did not believe there were now enough installations to take care of the public demand. What did you mean by that?
1416 A. I mean taking into consideration the enormous increase in the demand for gasoline, due to the production of automobiles, that I do not consider the distributing facilities have kept pace with the demand.

Q. You were not speaking, then, of the number of distributing centers, but you were speaking of gallonage, or capacity of distributing centers? A. I am speaking of both; both the size and number. I am speaking generally.

Q. Then do I understand you to say that you think that the tanks and pumps are not near enough to each other in most competitive areas? A. If you will cut

out "in most competitive areas," and substitute "in some competitive areas," I will say no, I do not think they are close enough together.

Q. In some of the competitive areas? A. Yes.

Q. Is that the same area about which you were speaking when you say that the equipment is not large enough to handle the public demand? A. My statement about the facilities and equipment was a general one. I might say that, in my opinion, the facilities generally for the distribution of gasoline to the public have not kept pace with the demand for such.

Q. Now, I separated those facilities for distribution 1418
into two parts: The question of gallonage and the question of numbers. A. All right.

Q. You said you thought, so far as numbers were concerned, that in some areas there were not numbers enough. A. That is correct.

Q. Would you say, then, that in most areas the question is one of gallonage rather than numbers? A. No; I do not believe I would.

Q. Would you say that in most areas, then, they ought to have more numbers of distributing centers? A. I do not like to say "most areas." I would say in many areas they ought to have more facilities.

Q. Would you say that "many" is greater or less 1419
than half? A. I would say it is greater than half.

Q. Then "in most" is all right? A. All right. Let it go at "most."

Q. Then in most areas you think there ought to be not only more gallonage, but more tanks and pumps? A. Yes; larger facilities for gallonage and more pumps.

Q. That would be true in the large cities, do you think? A. Yes, generally speaking that is where the demand for gasoline is.

1420 *Frederick D. Gatchell, Cross*

Q. And it is your opinion that in the large cities there are not enough actual points of distribution of gasoline? A. Yes, sir.

Q. Why do you say that? A. Why do I say that?

Q. Yes. A. Possibly from observation. I guess you have been in large cities sometimes, even with very adequate facilities, apparently, for the distribution of gasoline, and you have seen fifteen or twenty cars standing in a filling station waiting to get served; and you have seen cars along the streets in front of pumps where they allow you to vend from the curbs,
1421 ten or fifteen cars in line—I have; I don't know whether you have seen that or not. The public demands quick service and good service. I have actually seen people drive away from a very good sized filling station because they could not get served as quickly as they wanted to get served.

Q. You are acquainted with the service station business out in the Indiana territory? By that I am speaking of the Standard Oil of Indiana territory. A. I am slightly, yes.

Q. What is your judgment about it—your experience about it rather than your judgment, in that territory, where there has been an enormous increase in
1422 service stations? Have the number of curb pumps increased or decreased? A. I could not say as to that. I don't know.

Q. You don't know? A. No. I know that the number of filling stations has increased materially, but as to the effect it has had on the pumps I do not know.

Q. You do not know whether pumps in the vicinity of the service station have increased in number or decreased in number? A. I do not actually know.

Q. Do you know that in any territory? A. Yes; I know that in some territories they have increased, even in close proximity to the filling station.

Q. Do you know of any territory where they have decreased in number? A. I do not happen to think of any just now.

Q. Do you think that the on-coming—I am correct that service stations are coming into use very rapidly, am I not? A. Well, I think that is proven out by the fact that there is a number of stations being built all the while.

Q. It is a fact that service stations are increasing greatly in number, is it not? A. They seem to be, yes.

Q. Do you think the increase in number of service 1424
stations will have a tendency to decrease the number of ordinary curb pump equipments in the vicinity of the service station? A. Unless they are built faster than they are being built today, I do not think so. Of course there is a possible chance that if you build enough service stations, you can cover the same general character of service in a better way than you do with your individual pump and tank outfits.

Q. That is what I was getting at. So that, as a matter of fact, it is largely gallonage, instead of numbers, is it not? A. Well, it is gallonage coupled with convenient location, which means numbers of places.

Q. But the on-coming of the service station rather 1425
demonstrates that it is gallonage instead of numbers, does it not? A. No; I do not think I would say that.

Q. All right. Do you have service stations, yourselves, many of them? A. We have some, yes.

Q. What has been the economic reason for establishing service stations as far as you are concerned? A. Well, in certain localities, where the business warrants it, you can afford to put the investment that is necessary in a station of that character which we call a service station.

Q. So that a service station may be more economi-

cal than the lease and loan proposition? A. If it is sufficiently supported with business, yes.

Q. I am just getting at the general proposition that it may be more economical than the lease and loan equipment. A. Yes; but allow me to state that the service station, of course, is restricted to the areas where you can get a very large business.

Q. Yes. A. You could not do anything with service stations out in the country.

By Mr. Burdeau:

1427 Q. The service station is a separate branch of the business from the business of selling to garages and curb pumps, is it not? A. In the sense that it is retail business, direct to the public, it is, yes.

Q. That is just the distinction I wanted to make. A. Yes.

Q. And your price for gasoline from a service station is higher than your tank wagon price to the pump man or garage owner? A. In some cases, yes. Not in all.

Q. How long have you been assistant sales manager of the Texas Company? A. Between five and six years.

1428 Q. I understood you to testify that the Texas Company had been installing pumps and tanks under these lease agreements for only three or four years; is that correct? A. I said about three or four years.

Q. So that for a time you were sales manager, or assistant sales manager, during a period when that practice was not in use by your company? A. Yes.

Q. In what way did your company market and distribute its product during the period when it did not make use of the lease? A. Through such facilities as happened to be on hand at the places where we distributed the gasoline.

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Q. I know; but I want to know just what those facilities were. A. I think I said that sometimes they were above ground tanks, and even sometimes underground tanks, with the crude pump arrangement that they had at that time. Also in some cases I think, in some localities, they used to store gasoline in drums and take it out in an open measure, or a five-gallon tank, wagon, bucket, or something like that.

Q. Were these pumps in use at all prior to three or four years ago in the territory in which you are familiar with conditions? A. I think this type, or some other type of pump, might have been in service. In 1430
fact I know there was some pump and tank equipment, so-called, in service.

Q. Did your company initiate the practice of leasing and loaning these new style pumps? A. I do not know that we initiated it, no, sir.

Q. Was your company engaged in it as early as any other company? A. I cannot say as to that.

Q. What prompted your company to take up this plan of distribution, leasing and loaning pumps? A. The principal idea was that it was an up-to-date method of vending gasoline, and the equipment was better than the old ways of handling gasoline. It was just like all things that come along, new propositions that 1431
come along, improved methods of handling, and we adopted it as something that was necessary to carry on our business.

Q. Well, that was a question that fell within your particular duties, was it not, to consider the question of adopting that plan of distribution? A. To a certain extent, yes.

Q. Was it not because you found out that some of the competing companies had adopted that plan of doing business? A. I will say that might have had some bearing, but it was not the controlling factor.

Q. Was it not a fact that you were influenced, to a certain extent, in adopting the lease and loan plan because you were losing business to your competitors? A. We lose business all the while.

Q. I asked you the plain question if it were not a factor influencing your decision—that you were losing business to some of your competitors? A. That might have had a bearing on the situation, but it was not the controlling reason for adopting anything of this character.

Q. I understood you to say that you carried these
1433 installations as an investment? A. Yes.

Q. When you spoke of the plan of selling through a lease and loan of the tank and pump as the most economical, I assume you referred to the cost of getting your product from the refined station to the retail dealer; is that correct? A. No. I spoke of getting it from the refined station into the hands of the consumer.

Q. Is your company interested in the cost of distribution after it sells this retail dealer? A. Is it interested?

Q. Yes. A. We are, indirectly.

Q. Well, directly? A. Yes; directly.

1434 Q. In what way, sir? A. Because the distributer himself, in order to keep in business, has to enjoy a certain differential of profit.

Q. I do not quite understand that, and I want you to make it a little plainer to me. Please explain your last answer. A. Anybody that conducts a business has got to make an earning on the business, in order to keep in business, has he not?

Q. I assume that is correct. The man who owns his own pump and tank must make a profit on his business in order to keep in business; is not that correct? A. I assume so.

Q. Is there any difference in his position and the position of the man to whom you loan or lease a pump? A. Is there any difference in his position?

Q. Yes—on your theory? A. I do not see any difference.

Q. Please explain to me again in what way, with reference to what cost do you use the term "most economical" as applied to the lease and loan agreements? A. I apply it in connection with the other possible method of creating agencies.

Q. It is a method of creating agencies and not of selling to existing agencies; is that it? A. These are 1436
not agents at all, no.

Q. I am trying to get at your idea of the economy in distribution. For what reasons do you say that the lease or loan agreements are the most economical plan of distribution? A. Because I think so.

Q. I know you do, but I want your reasons for thinking so. A. All right. I have told you—as against the creating of agencies.

Q. Then your theory is that, if I understand you, it is a beneficial plan in creating agencies where none exist before; is that correct? A. No; not agencies. We do not consider these lease and loan agreements as agencies at all. These people buy our product out- 1437
right, and they sell it.

Q. You sell to a man who owns his tank and pump equipment at exactly the same cost to your company as you sell to a man who leases the pump from you, do you not? A. Exactly.

Q. And in addition you have the investment of the cost of the pump in the last case; isn't that so? A. Absolutely.

Q. Where is the economy in that arrangement, by comparison? A. The economy—if you will remember my testimony on that, I said it made no differ-

ence to us whether the man bought the pump and tank equipment or not, but if we could not secure a location, and could not get anybody to put in a pump and tank by buying, or if the man had no equipment in a desirable location, we were prepared to furnish additional facilities for that man to handle our gasoline.

Q. I understood you to say that you think the practice of loaning and leasing pumps brings in competition, or creates competition; is that correct? A. Yes.

Q. Will you please explain why that is? A. Well,
1439 I make that answer on the basis, again, of observation. I can only say that where pump and tank equipments have been leased and loaned in the last few years competition in the number of companies has increased. Possibly I could not specifically state why, but it is a fact that it has.

Q. That competition consists of loaning and leasing more tanks and pumps. Is that it? A. In some cases, yes.

Q. Bidding for trade by lending and leasing more of these equipments? A. But the funny part of the thing is that there is business for everybody there when the competition comes. Nobody has been—but
1440 you did not ask me that.

Mr. Hayes: What was your answer?

The Witness: I said that the funny part of the thing was that there was business enough for everybody in these places where the competition did come in.

By Mr. Burdeau:

Q. You stated that you sometimes found it difficult to get a sufficient number of distributing points without putting in the lease and loan tank equipments? A. Did I make any such statement as that?

Q. I think so. A. I did not say that we found it difficult. I said that in order to get to the desirable locations—if I remember correctly, that is what I said.

Mr. Burdeau: That is all.

RE-DIRECT EXAMINATION by Mr. Hayes:

Q. Will you just tell me what are the component parts of a pump outfit that you obtain from the pump manufacturers? A. There is the pump itself, which consists of certain cylinders, and pistons, that work up and down, and there is the tank, what is known as the foot valves, and the strainer, and the other numerous other little fittings around which connect the two together. 1442

Q. Do they all come in one package, together? A. No.

Q. How do they come to you? A. The pump is generally crated, and the tank is generally crated.

Q. Separately or together? A. Separately.

Q. How about the fittings? A. The fittings come, generally, in a gunny sack, or wrapped up in a separate package.

Q. So that when the pump outfit complete arrives at your place of business, it arrives in three distinct packages? A. Three or more I should say. 1443

Q. Three or more? A. Yes.

Q. When you get an order from a customer to put up a station, do you take these three or more packages to the customer's place of business and just dump them on the sidewalk, and leave them there? A. Oh, no.

Q. Is the pump, the tank and fittings, ready to open up so that you can just drop it on the sidewalk? A. Not in the least.

Q. What do you have to do? A. You have to assemble it and put it together, put the tank in the ground and connect up the piping, put in the foot valves, put the handle on the pump, and so on.

Q. I am assuming that the Commission does not know anything about this, as well as myself. When you get your pump there, complete, delivered as you say to your customer, what do you do with the tank; what is done with the tank? A. It is buried in the ground.

Q. Where is that generally buried; some distance
1445 back from the curb? A. It may be thirty or fifty feet away, or it may be ten feet, depending upon certain circumstances. There may be some ordinances or something about the distance the tank has got to be from the curb.

Q. Then what do you do with the pump? Where do you put the pump? A. If the pump is going to be located at the curb, we set it up at the curb, on a concrete foundation, and connect the pipe up to it, thirty feet of pipe back to the tank, or whatever it is.

Q. So that you make a concrete platform there, or support for the pump at the curb? A. Yes.

Q. Where do you get your concrete and the neces-
1446 sary parts to make your mixture from? A. We buy it of the local dealers, generally.

Q. And your thirty feet of pipe; does that come with the pump? A. No.

Q. Where do you get that? A. It is bought from local pipe fitters, generally, or shipped from our stock room; generally bought from the local pipe fitter.

Q. That does not come from the pump manufacturer, we will say, S. F. Bowser, or any of the others? A. No, sir.

Q. Do you generally have one or two workmen there to connect this thing up and put it in, or more?

A. I should say generally more than one; generally more than two.

Q. Then you connect up your tank, which is about thirty feet away, at least thirty feet away, with this pipe line to the pump, which has been placed on a concrete foundation? A. Yes.

Q. Do you get your tank from the same manufacturer as you get your pump? A. Sometimes, and sometimes not.

Q. Can you say, when you take out a tank to put up at a particular place, whether that particular tank came from the pump manufacturer or from another 1448
individual? A. I could not. By looking at the tank I might, by tracing a number, or something on the tank, trace it back to a certain source.

Q. I mean, just by looking at it? A. No; I could not tell whether it came from Bowser or somebody else.

Q. How much does the tank itself cost? A. When you refer to a tank, do you refer to, say, about a ten-barrel tank?

Q. Take this one-gallon stroke pump that you spoke about a few moments ago; what would the tank cost there? A. Of course the size determines it.

Q. Tell me the different sizes. I don't know them 1449
and I presume the Commission does not. A. I can give you some approximate figures on that, but I am not up on the actual cost of the stuff. I should say a 550-gallon tank, or a 10-barrel tank, welded tank, would cost in the neighborhood of $150 or $160.

Q. And the pump; what does that cost? A. A one-gallon stroke pump?

Q. Yes. A. About $150 to $160, I should say. You are speaking about installed?

Q. No; I am speaking about the tank itself—nothing about installing, now, but how much does the tank itself cost? A. I will say around $150 to $160.

Q. And the pump; how much does that cost? A. About $150 I should say, or $160.

Q. So that you have there about $310 worth of pump and tank? A. Yes.

Q. How much does it cost to install them? A. That is a very variable proposition.

Q. We will say the lowest up to the highest. A. All right; from $50 to $2,000.

Q. That is all.

By Mr. Schekter

1451 Q. Would it be correct to say that there is no such thing as a complete or uniform unit of this curb pump equipment coming from the factory directly? A. If you consider the pipe fittings a part of a complete unit, I would say not.

Mr. Hayes: Can you run the pump without the pipes?

The Witness: No; you could not run the pump unless it was connected with the tank.

By Mr. Nesbitt:

Q. Has your company considered, from an economic standpoint, the practice of leasing equip-
1452 ment at a nominal rental? A. Has it considered it?

Q. Yes; considered it from an economic standpoint? A. Certainly.

Q. And was the decision that it was an economic policy in the judgment of the company? A. Yes.

Mr. Nesbitt: That is all.

By Mr. Burdeau:

Q. Did the Texas Company ever install for a retail dealer any pump or tank at an expense of $2,000 for installation? A. I would not say definitely $2,000.

It might have been more. That was where we struck quicksand.

Q. Your company paid for it, whatever it was? A. Somebody paid for it—not the customer.

Q. The answer is that your company paid for it? A. Yes.

By Mr. Schekter:

Q. In your purchases of pumps and so forth, from the S. F. Bowser Company, has the Bowser Company at any time made it a provision in their dealings with you that you shall only deal in those pumps by way of 1454
lease or loan? A. I do not think it has ever been made a provision of any contracts we had with the Bowser Company.

Q. Has it been made a provision verbally or by any sort of understanding? A. I think the Bowser Company, as well as ourselves, at the time that they made the arrangement with us to sell us their pump and tank equipments, understood that we were going to use them for our own, as we wanted to, and that we did not expect to organize any sales force to sell pump and tank equipments.

Q. And of course understood that you would lease and loan them in the way that you have? A. I think 1455
they thoroughly understood that we were to lease and loan pump and tank equipments.

Q. Just one other question. In answer to Mr. Zechiel you said rather generally that you would just as soon deal with a garage man or retail dealer who had his own equipment, as you would lease and loan him one of these curb pump equipments. Would it be a consideration with you, at all, as to whether his equipment had a sufficient storage capacity? A. Yes, I think it would, especially in some localities, where, if we could arrange to make full load dumps to him,

it is a much cheaper operation to deliver in full load dumps than it is in the small tankage.

Q. In that event you would prefer to lease and loan the equipment? A. Yes.

Q. Thereby curtailing your delivery equipment? A. Yes. I think the expenditure would be well justified in the saving in your delivery facilities.

Q. And have you found that that is a general consideration in your general lease and loan of this equipment? A. We have taken that into consideration at times, yes.

1457

Mr. Hayes: May I make a suggestion to government counsel, and also to the Examiner? It just struck me that if all counsel in the case indiscriminately asked questions, we will be here an indefinite time, and I was wondering whether it would not be advisable and possible for each side to have one counsel examine a witness, and if the other counsel desire to submit any questions, let them submit them through that one attorney. Here we have had four examining this witness. We are all taking a shot at him.

1458

Examiner Dunham: All of us who have practiced law for any considerable length of time recognize that it is within the proper rules for one man on each side to conduct the examination. The Examiner, however, would not undertake to prevent anybody on either side from asking any questions that suited them. I would not undertake to control them.

By Mr. Zechiel:

Q. Do you install all your equipment on the lease and loan plan yourselves, or do you sometimes just have them installed? I mean, does the party who

leases them install them? A. We, in effect, install them; we either install them ourselves or pay for the installation. At one time we had an arrangement with the Bowser Company themselves for installing the equipments, but we paid the Bowser Company for the installation.

Q. At the present time you install them all? A. We install our own, except in, I think, one or two of the districts, we may have an arrangement of that kind now.

Q. If I understand you correctly, you feel that your company is engaged in an economic practice in in- 1460
stalling a large tank where the installation of a large tank enables you to make a full dump haul? A. Yes.

Q. And that that is the reason for installations in those cases? A. Yes, that has a bearing.

Q. It would be possible, would it not, with the same idea in view, to fix a price for full dump hauls. A. That has been done in some cases.

Q. It would answer the same purpose? A. Yes.

By Mr. Speer:

Q. That would still require the haul, if the small tank was kept in? It would require that additional hauling? A. Yes; it would still require the haul, but 1461
if the company was compensated by an additional price—

Q. You would get paid for it? A. Yes.

By Mr. Nesbitt:

Q. Is it your experience that where people who are dispensing gasoline to consumers own their own equipment, they maintain, in connection with that equipment, a trade name or mark of gasoline? A. Generally they do.

Q. Is it your experience that where you have sold to such a customer he dispensed only Texas Company

gasoline through this equipment? A. My experience has been that they dispense through the pump what the trade-mark brand that they are supposed to dispense shows. There are some people in all businesses that are crooks, but generally speaking, I say the trade-mark brand displayed on the pump is dispensed through the tank and pump.

Q. That is regardless of whether the equipment is leased or owned, or how it is installed? A. Regardless.

Q. Would you allow any other brand of gasoline to
1463 be distributed under a Texas Company mark? A. Not if we knew it.

By Mr. Zechiel:

Q. Where the customer owns his own equipment, is there a sign on that equipment? A. Generally there is.

Q. Whose sign is on there? A. Whoever he is doing business with.

Q. So that if you were selling him gasoline, he would have your Texas "Texo" sign on it? A. Yes.

Q. That is a globe on top of the pump? A. Yes.

By Mr. Speer:

1464

Q. And if you go into a community to build up a business, and you find some one that has his own equipment who is willing to sell your gasoline and put up your sign, you are satisfied? A. Yes, sir.

Q. Your purpose, as I understand, is to get your product to the consumer under your trade-mark? A. That is the main purpose.

Q. And to do that you have got to have stations which consist of the tank and pump through which it is to be sold? A. Yes.

Q. And if a man who owns such an equipment is not willing to sell it, you immediately try to get a

location and put in equipment of your own? A. If we want distribution in that locality, yes.

By Mr. Zechiel:

Q. Do you mean that if John Jones, who owns an equipment of his own in a community, refuses to buy your gasoline, then you install some such equipment in that community, in order to get an outlet for your goods? A. Yes; I would say that if, through the facilities already created, we have no source of outlet for our gasoline, and if we want distribution in that locality, we are willing to furnish pump and tank 1466
equipment to get that distribution.

Mr. Zechiel: That is all.

(Witness excused.)

Examiner Dunham: We will adjourn until tomorrow morning at 10:00 o'clock.

Whereupon, at 4:20 o'clock P. M., on Dec. 1, 1919, an adjournment was taken until December 2, 1919, at 10:00 o'clock A. M.

New York, N. Y., December 2, 1919, 10 A. M. 1467

Met pursuant to adjournment.

Present: Parties as before.

C. EDWIN YOUNG, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct-examination by Mr. Speer:

Q. In what business are you engaged? A. Petroleum products.

Q. With what company are you connected? A. Standard Oil Company of New Jersey.

Q. What position do you hold with that company? A. Sales agent.

Q. How long have you held that position? A. About three months.

Q. Prior to that time were you with the company, and what was your position? A. Manager of the Newark, N. J., division.

Q. Did you have charge of sales in that position? A. Yes, sir.

1469 Q. How long have you had to do with the marketing and selling of gasoline and other petroleum products? A. I have been with the company thirty-six and one-half years.

Q. State whether or not in the dispensing of gasoline and other lighter oils it is necessary to have a special container in which they are kept or stored while being dispensed to the public? A. Yes.

Q. Originally what containers were used for that purpose? A. Mostly small storage tanks, largely above-ground tanks.

Q. Before the use of tanks came in were barrels or steel drums used? A. Yes, barrels and cans and
1470 small 50-gallon tanks; anything they could get that would hold gasoline.

Q. Was it the practice when oil or special or lighter oils were being retailed to the public to loan the barrels or steel drums in which it was shipped to the retailer to contain the product while being sold and to return them afterwards to the seller? A. Yes; mostly wooden barrels in those days; there were some steel barrels, but mostly wooden barrels.

Q. Since the use and demand for gasoline has largely increased what is the recognized facility or equipment now used to dispense that product to the

consumer, especially to the automobile trade? A. Larger storage tanks were required and the introduction of curbstone outfits on the curb has made it much more convenient for the public to secure their gasoline while in transit.

Q. That outfit consists of what? A. A storage tank, a pump and generally a pedestal with a globe on the top of it, with its connections.

Q. What is the globe used for? A. For advertising the trade-mark, an electric light in the interior of it for night, and, of course, in the day it can be seen.

Q. Is such a facility or equipment necessary in 1472
order to dispense the product to the automobile trade? A. Absolutely. I do not think the public would stand for any other method of delivery.

Q. After this equipment came in use for dispensing the product to the public state whether or not the former habit of loaning barrels and steel drums was also applied to this facility or equipment? A. I do not quite understand that.

Q. You have stated that formerly it was the practice to loan the barrels and steel drums. Now, did that practice of loaning the equipment or container also come into vogue with the introduction of this new facility? Has it been in practice, the loaning of 1473
this pump equipment, has that been in practice? A. That has been in practice about five years.

Q. And how recently has this placing of curbstone equipment arisen? That is recent, too, is it not? A. About five years, that is what I meant.

Q. So that the practice of loaning as I understand practically began with the use of these curbstone equipments? A. Yes.

Q. Does your company distribute gasoline to the automobile trade, to the consumer? A. Yes, to the consumer.

Q. And do you do that under a trade name or mark? A. Yes.

Q. Is that trade-mark a valuable business asset? A. Very.

Q. How has it become so? A. By standardizing the quality of gasoline and advertising and introducing it to the public so they know the brand and ask for it.

Q. In order that the public may know that they are getting your brand of gasoline what is done or what is placed upon the equipment or station at which the
1475 delivery is made to the public? A. A globe is on the curbstone outfit and frequently there are signs on the building.

Q. In marketing your product and delivering it this way to the automobile trade what facilities are required; the entire equipment that you use; describe it? A. For deliveries?

Q. Yes. A. Well, now, it is mostly motor trucks or horse-drawn vehicles.

Q. First, do you ship the gasoline and what do you do with it, what is done with it? A. We receive the gasoline in either drums or in tank cars and pump it into the storage tanks from which it is drawn in
1476 the motor trucks or horse-drawn vehicles and carted and delivered to the storage tanks.

Q. You establish a storage station where you erect tanks? A. Yes.

Q. What else have you there besides tanks? A. Pumphouse, warehouses, offices and general station equipment.

Q. Garages for your trucks? A. Garages, yes, and stables.

Q. And then you have a certain storage capacity there? A. Yes.

Q. What is the rest of the equipment which you have? You have already mentioned tank wagons, I believe. A. Tank wagons and motor trucks.

Q. And what other facility for finally dispensing it to the public, in addition to the tank wagons? A. Well, we have, of course, the barrel and package equipment.

Q. And when you do not use it in barrels how is it dispensed to the public? A. It is dispensed through these curbstone outfits.

Q. Do you consider those a part of your facilities? A. They are an immense outlet for dispensing gaso- 1478
line, yes.

Q. Do you know the amount of investment that your company has in loaned outfits at this time? A. Approximately.

Q. Could you give the amount in dollars, approximately? A. About $1,300,000.

Q. Do you also sell your gasoline to garages and other dispensers who have their own equipment in the way of pumps? A. Yes.

Q. State whether or not your arrange with those customers of yours to carry your sign and trade-mark over their equipment or at their garages? A. We do, where they sell nothing but our product. 1479

Q. State whether or not that is a general practice as to those who own their own equipment or what is the general practice of those who own their own equipment, as to whether or not they sell one brand of gasoline or whether they mix it and keep selling different kinds. A. They are liable to handle one product of one of the oil companies, whichever one they may select.

Q. Have you such customers who have been taking your products for years without change, and selling it under your brand? A. Yes, we have a few.

1480 Q. What do you say as to whether the leasing and loaning of these pumps and outfits has caused more of them to be installed than would probably have been installed had the operators been compelled to purchase and own the outfit? A. I think there are a great many more installed on the loaning proposition than they would if they had purchased them on account of about three-fourths of the garages are unable to spend much money for equipment. They are mostly mechanics and have not much executive ability in business.

1481 Q. And they are unable to undertake the risk of the investment? A. No.

Q. What effect has the installation of these equipments had in the way of accommodating the public in the matter of obtaining the supply of gasoline they may need, especially the automobile trade? A. It is of immense advantage. I do not see how they could ever go back to the old practice. I do not believe the public would stand for any other method of delivering gasoline to them.

Q. What do you say as to the necessity of having these equipments distributed and installed through the rural communities for the purpose of furnishing the

1482 necessary storage to supply a community with gasoline? A. I think it is very essential, because it reduces the equipment for keeping the tanks properly supplied with gasoline. Where you have a system to cover it is essential to have large storage for that purpose.

Q. And does that have any effect in the cost to you of keeping the community supplied with gasoline from your tank wagons? A. Well, the larger the deliveries we make, the more economical the marketing becomes.

Q. If then someone had a station with a small old-fashioned tank not of sufficient capacity which you

are supplying with gasoline would it be a profitable thing for you to install an equipment of the kind with a tank of sufficient capacity so as to make the expense of delivering to him and supplying him less to you? A. Most decidedly.

Q. There has been some testimony produced at the hearing which I presume you did not hear, to the effect that the operators of these equipments even when they had a sign showing that they were selling a certain brand of gasoline, were indifferent and bought and sold through that equipment different brands of gasoline indiscriminately. What do you say as to 1484
whether or not that is a common practice? A. In very few instances, I should say.

Q. If you found someone to whom you were selling gasoline and who was dispensing it through an equipment with your sign upon it, whether it was his own equipment or leased equipment, would you acquiesce in that practice? A. Decidedly not. We would take the signs out.

Q. If you were compelled to cease from the loaning of such equipments what would you in all probability do in order to continue to furnish the public with your gasoline under your trade brand, so far as these stations are concerned? A. Well, if they did 1485
not continue to sell our gasoline, of course, we would have to remove the equipment, but we would endeavor to lease or sell the equipment.

Q. Is there a method of maintaining stations by creating the operator the agent of the company? A. Yes, that could be done, or service stations could be started.

Q. Would service stations which have been described here and which cost a considerable outlay be profitable in sparsely settled communities? A. No.

1486 Q. That is shown, is it not, or does the fact that the automobile trade do go to these curb pumps have any influence in your judgment as to whether or not the curb pumps are a convenience and a proper way of reaching the trade? A. A great convenience, yes.

Q. And as a matter of fact, they go to them instead of going to the service station? A. Yes, they go to the nearest pump usually.

Q. What do you say as to whether or not this practice of loaning equipment has tended to decrease or increase competition in the sale of gasoline? A. I
1487 find in the field we cover that the competition is increasing.

Q. What territory do you cover? A. New Jersey, Maryland, Virginia, West Virginia, North and South Carolina.

Q. Are there more companies operating in your territory now than there were a few years ago? A. Yes.

Q. What companies do operate there? A. In New Jersey which I am more familiar with on account of the short time I have had charge of the other states, the Texas Company, Gulf and Ohio Cities Gas are the most common.

1488 Q. Those are the large companies? A. Yes.

Q. Do they all market to the public under a trademark or brand? A. Yes.

Q. In addition to the large companies which are operating all over the country are these smaller companies or jobbers operating in particular localities? A. Yes.

Q. What do you say as to whether or not the number of these has increased in the last few years? A. From the short time I have had charge of the south I would say they were increasing.

Mr. Speer: That is all.

C. Edwin Young, Cross 1489

CROSS-EXAMINATION by Mr. Burdeau:

Q. You are connected with the Standard Oil of New Jersey? A. Yes.

Q. And have charge of the sales department? A. Yes.

Q. For how long? A. For about three months.

Q. Were you familiar with the selling organization of that company prior to that time? A. Yes.

Q. You had supervision of it or some connection with it? A. I was manager of the Newark division, which included New Jersey, the State of New Jersey. 1490

Q. You had some familiarity with the selling methods of your company in that division? A. Yes.

Q. For how many years? A. Thirty-six and a half.

Q. When did the practice of loaning or leasing pumps become prevalent? A. About five years ago.

Q. Do you know what company initiated that practice? A. No.

Q. Do you remember what companies were doing business in that territory five years ago? A. Gulf, Texas, Pure Oil, Crew-Levick Company and ourselves I think covered it.

Q. Do you remember which of these companies, 1491 if any, were using that practice five years ago? A. No, they started just one at a time and, of course, it was impossible to recollect.

Q. Do you recollect whether or not any of your competitors had adopted the practice before the Standard Oil of New Jersey took it up? A. I am not sure.

Q. Do you recall the reasons which prompted the Standard Oil of New Jersey to adopt this practice? A. Yes.

Q. What were those reasons, please? A. To prop-

erly accommodate the public with proper facilities for receiving gasoline at their automobiles.

Q. I am going to ask you to be a little bit more specific in the matter of properly of accommodating the public. By that I mean what business does the Standard Oil Company of New Jersey carry on? It sells petroleum products, but does it do a general retail business? A. In some cases.

Q. How does it conduct its retail business? A. Gasoline, do you refer to?

Q. Yes. A. By delivering to private garages.

1493 Q. You do not consider that—garages owned by an individual owner of an automobile? A. Yes.

Q. Not storage garages or service garages? A. No. You said retail.

Q. Does it maintain any service stations of its own? A. Only a few.

Q. About how many? A. Three or four.

Q. And you would consider the proportion of business done through service stations as practically negligible so far as volume is concerned? A. At the present time.

Q. Would you consider the volume of business done through private garages of any considerable
1494 amount? A. That is the retail you are referring to?

Q. Let us get this perfectly clear. By private garages I mean a garage owned by an individual owner of an automobile. A. Yes, there is considerable.

Q. It is considerable? A. Yes.

Q. Could you give us an approximate percentage? A. No, I have not got the figures.

Q. Is it not a fact that the large bulk and volume of your business is selling to jobbers and retailers, pump men and garage men? A. Yes.

Q. So that your business is wholesaling? A. Yes.

Q. And the service to the public depends upon your customers and not yourselves? A. Yes.

Q. About how many pump and tank outfits has the New Jersey Company installed? A. About five thousand five hundred.

Q. And in what territory are they distributed? A. New Jersey, Maryland, Virginia, West Virginia, North and South Carolina.

Q. That represents about 5,500 different customers? A. Practically.

Q. About how many customers have you among garage men and curb pump men who own their own equipment? A. I do not know the percentage.

Q. Cannot you make some comparison with the 1496
figure of 5,500 that you have given me for the leased equipment? A. Well, I suppose about three-fourths of the trade cannot afford to buy their equipment and possibly one-fourth can. Now, what percentage of that quarter, I am not sure.

Q. How long do your leases run as a rule? Of course, we have some in evidence, but I want to follow this up? A. They can be cancelled in thirty days.

Q. Do you find occasion to cancel any large percentage of these leases? A. Not very many.

Q. You have a— A. We have transferred the pumps on account of the small business, but a very small percentage of the total. 1497

Q. On account of the small business did you say? A. Yes.

Q. Has there been any cancellation for other causes, dissatisfaction with the business methods? A. Not that I know of.

Q. You would know it, would you not? A. I would be very apt to.

Q. I understood you to say that the customers you have who own their own equipment are to a large extent as steady and constant in their dealings with your company as the lessee of one of your equipments,

is that correct? A. I think it is apt to be the case of any one handling one grade of gasoline, to confine themselves to that one grade.

Q. You find in your experience that your customers who do not lease from you but who own their own equipment buy from you as steadily and as constantly as the lessees— A. Not entirely so.

Q. Not entirely so? A. No, some change.

Q. Not to any considerable extent? A. Well, some of them, some of the large customers change.

Q. I understood you to testify that in the case of
1499 owners of their own equipment you had no difficulty in placing your sign on their pump? A. Where they sell our goods, yes.

Q. Where they sell your goods. Well, that is the only man you want to have anything to do with, is it not? A. If they sell somebody else's goods we take the signs out.

Q. Certainly. You have testified that when you got a customer, whether he owned his equipment or leased it from you he was apt to continue to do business with you? A. I think they are apt to, but not always.

Q. Do you recall how many cases there have been
1500 in which you have taken signs down from owned equipments? A. No. I have kept no record of it.

Q. Now, you have said something about a method of distribution which was in use at one time, namely the steel drum. What purpose did the steel drum serve Mr. Young? A. As a transportation and storage.

Q. It was the only available means at one time of taking your product from your refining stations to the retail dealer, was that not so? A. Yes, where—

Q. That was before the day of the tank wagon delivery or distribution? A. We did not have any gasoline then?

Q. Sir? A. We did not have any gasoline then.

Q. Did not have any? A. No, we had tank wagons thirty-six years ago.

Q. Well, the steel drum or tank bears the same relation to your business as the tank wagon does, is not that so? A. What do you mean, with reference to transportation and storage?

Q. Yes. A. Yes.

Q. And it is an entirely different proposition from the curb pump; the curb pump serves an entirely different purpose, does it not? A. Yes.

Q. The curb pump has nothing in the world to do 1502
with taking your product from your station to the retail dealer, has it? A. Do you mean in the way of transportation?

Q. It has nothing to do with getting your product from your stations to the retail dealer? A. No.

Q. It is purely a device for retail distribution? A. Yes.

Q. Does the Standard Oil of New Jersey sell in bulk to jobbers? A. Yes.

Q. And these jobbers put their own brand on that gasoline, is not that so? A. I presume so.

Mr. Burdeau: That is all.

1503

RE-DIRECT EXAMINATION by Mr. Speer:

Q. In reference to the use of the drum, Mr. Young, when the drum was used, as I understand you, you not only transported it to the retailer in the drum but he also under a common practice retained the drum as a container of the gasoline or oil while it was being sold? A. For storage, yes.

Q. So that the drum not only furnished the means of transportation but furnished the container out of which it was sold? A. Yes.

1504 *C. Edwin Young, Re-direct*

Q. Now, under this method of pumping equipment and tank wagon, the two together furnish the same purpose that the drum originally did? A. Yes.

Q. That is the tank wagon transports it and the pumping equipment contains it while it is being sold? A. Yes.

Q. So in that respect the present facilities, the tank wagon and equipment, take the place of the old drum? A. Yes.

Q. Your company does a large wholesale business in addition to the marketing to consumers which you
1505 do in certain territory which you have testified. Is it not a fact that a great deal of your wholesale business goes to other states than the states in which you are marketing to consumers? A. Yes.

Q. You are selling wholesale in other states largely? A. Yes.

Q. Is it not a fact that some of the jobbers that you sell to really use your trade-mark in the dispensing of their goods and advertising it as yours? A. I do not know about—they use their own trade-marks.

Q. Are those jobbers in the territory where you are marketing to the consumer through this pumping
1506 outfits or are they mostly outside of that territory? A. The jobbers?

Q. Yes. A. They are selling business in the territory where the outfits are located.

Mr. Burdeau: Mr. Zechiel wants to cover certain jurisdictional questions and not overlap my questions.

Mr. Speer: Well, in that respect I think it is fair to say that I called this witness not as representing the Standard Oil Company of New Jersey but on our behalf and I have not touched upon any of those jurisdictional ques-

tions which may affect his company as I am not calling him for his company.

Mr. Burdeau: If it is outside of the direct-examination—

Mr. Speer: It would not be cross-examination, but if you want to call him I do not want it understood that I am producing him here as a witness for his company, and for that reason I have refrained from examining him on those jurisdictional questions.

Mr. Zechiel: I may be mistaken, because you had Mr. King and Mr. Young both on, 1508
but my recollection was that you asked Mr. Young something about how they sold their goods.

Mr. Speer: That has reference to the equipment, but I did not ask him whether they sold it over lines or not, but it was simply with regard to facilities.

Mr. Hayes: This witness was not called by the Standard Oil of New Jersey. He is called as a witness on behalf of the Standard Oil of New York. Of course, as I understand the examination is not confined to the strict rules of evidence. If that were so, Government 1509
counsel would not be permitted to go beyond the scope of the direct-examination, so that if the Government counsel want to call him as their witness it is up to them. But I feel if they go into any other matter outside of the direct-examination, they should call him as their witness.

Mr. Burdeau: In so far as purely jurisdictional questions are concerned I am satisfied that we could get the facts by stipulation or otherwise, and since Mr. Young is here it would save everybody's time to ask him a few questions.

Mr. Hayes: You can call him as your witness. Let it be understood he is called as the Government witness.

Mr. Zechiel: Well, I will not ask any further questions on cross-examination, but I do want to ask some general questions.

Mr. Hayes: As I understand it now he becomes the Government witness?

Mr. Zechiel: Yes.

By Mr. Zechiel:

1511 Q. Mr. Young, your company installs these pumps and tanks under lease and loan agreements, am I right about that? I think the answer so admits. With respect to the number of these installments, about how many have you, as a matter of numbers?

Mr. Burdeau: He has testified to that.

A. I testified to that, 5,500, and I gave the territories.

Q. Did you testify as to the per cent of your product that is sold through leased equipments? A. No.

Q. About how much is that? A. I think between fifty and sixty per cent.

1512 Q. Do you also have filling stations owned by your company? A. I had that in the evidence, about three, I think.

Mr. Zechiel: Then probably most of this has been covered. Did the witness testify more in detail about how the goods were actually brought onto the market.

Mr. Speer: No, not the shipments. I did not ask him about that.

Q. How does your company get its product usually? I am speaking with respect to petroleum products. A. In the territory I cover, I suppose you mean?

Q. Yes, in the territory you cover. A. From the refinery by boat or tank cars.

Q. Where are your refineries located? A. At Bayonne, Bay Way, Baltimore—

Q. Where is that? A. Bay Way is Elizabeth, New Jersey; in New Jersey, Maryland and West Virginia.

Q. And in West Virginia? Do you have a refinery in West Virginia also? A. Yes.

Q. And you ship your product to the refineries directly from the oil fields that you own yourself? A. Yes.

Q. And from the refinery how do you get your 1514
gasoline product to your marketing stations? A. By boat or tank cars.

Q. Now, the marketing station is the one you described for Judge Speer? A. The distributing point to the trade, yes.

Q. From these distributing points do you ship any product at all across state lines? A. No, I am speaking of New Jersey more particularly, because I am more familiar with that. I have been only in the south two or three months. But we do not ship very much. We do ship some outside the state, but only by rail.

Q. You do not deliver in your tank wagons across 1515
the state line of New Jersey? A. No.

Q. But you do not know whether you do or do not down in North Carolina or— A. Yes, I know they do not. They are confined to the different states.

Q. And the pumps and tanks which you use, where do you secure them? A. The curbstone outfis?

Q. Yes, the outfits. A. From Gilbert & Barker Manufacturing Company, Springfield, Mass.

Q. You receive them on orders I presume, do you? A. Well, we ship them in carload lots and distribute them after they are received.

1516 *C. Edwin Young, Re-direct*

Q. You have them sent in carload lots. Where are they sent? A. To central points in the different states.

Q. Do you ever have them sent to customers directly? A. Not that I can recall.

Q. After they are shipped to the central points, what happens to them? A. Then as orders are received for them they are distributed and installed.

Q. Are they then distributed across state lines, do you know? A. No.

Q. You do not know or they are not? A. They
1517 are not.

Q. These pumps and tanks are stored by you when you receive them in carloads? A. Yes, in our warehouses.

Q. And in the same crating and wrapping in which they are received? A. Yes.

Q. And are also installed from the same wrapping and crating? A. You cannot install them without taking the crates off.

Q. I say from the same wrapping and crating? A. Yes, from the cratings.

Mr. Zechiel: That is all.

1518 By Mr. Hayes:

Q. Mr. Young, what are the component parts of a pump outfit? A. A storage tank and a pump and—

Q. And fittings? A. And fittings and pedestal and a globe.

Q. Do you get all these different component parts from one and the same manufacturer?

Mr. Zechiel: Mr. Hayes, I think that the testimony of Mr. Gatchell in regard to that—

Mr. Hayes: Will you admit that he will testify to the same effect?

Mr. Zechiel: Yes.

Mr. Hayes: It is stipulated that the same questions and answers propounded to Mr. Gatchell yesterday by myself would be the same questions and answers propounded to and answered by Mr. Young.

Mr. Zechiel: Yes.

Mr. Hayes: That is all.

(Witness excused.)

1520

WILLIAM R. KING was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct-examination by Mr. Speer:

Q. In what business are you engaged? A. Vice president of the Standard Oil Company of New York, executive head of the merchandising interests.

Q. How long have you had charge of the merchandising department of the Standard Oil Company of New York? A. About forty years.

Q. What class of goods do you sell through your merchandising department? A. All grades of petroleum. 1521

Q. Do you deal especially in gasoline? A. I do.

Q. How long have you handled gasoline? A. Almost forty years, since my connection with the organization.

Q. Have the use and demand for gasoline increased largely in the last few years, and if so, why? A. It has increased wonderfully. In 1900 less than eight million barrels were sold in the United States, and last year over eighty million.

1522 *William R. King, Direct*

Q. What has caused this increase in the consumption of gasoline? A. First there was the introduction of stationary gasoline engines, then automobiles, pleasure cars, trucks, launches, aeroplanes; mostly automobiles.

Q. What percentage of the gasoline which you sell to the consumer in your retail trade as near as you can estimate it is taken and used by automobiles? A. Ninety per cent.

Q. Prior to the use of gasoline in engines, and automobile engines particularly, how did the price
1523 of gasoline compare with the price of refined oil, water white oil, for instance? A. Well, for a great number of years it was lower than the price of refined oil.

Q. And was practically a drug on the market? A. Practically a drug on the market.

Q. In the refining of oil is it necessary to produce more or less of the lighter product which is generally called gasoline? A. At the present time?

Q. Yes, always; was more or less of it always produced? A. Always more or less was produced.

Q. But formerly there was no demand for it? A. No demand of any great amount.

1524 Q. Do you know whether it was in some respects a waste product? A. A great many times.

Q. Now, since the demand has increased how about the proportion of gasoline which they make out of oil in refining it? A. It has increased wonderfully.

Q. And have new methods have been devised? A. New methods have been devised of every description.

Q. To produce more gasoline? A. To produce more gasoline.

Q. State whether or not in the dispensing of gasoline and lighter oils to the public a special container

of some kind is necessary to hold the product while it is being dispensed? A. Absolutely necessary for safety and convenience and economy.

Q. Before the use of gasoline became so common what were the containers usually employed for this purpose to hold the lighter oils and dispense them? A. Wooden barrels, cans, any kind of an old tank, ordinarily known as a store tank; it was not a safety tank in any way.

Q. And later instead of wooden barrels what came in? A. Then the steel barrels came in as containers.

Q. And when gasoline came to be used largely and 1526
shipped do you know if there was any requirement compelling the shipment of it in steel barrels? A. Well, the railroad authorities compelled us to ship it in steel barrels instead of wooden barrels.

Q. What was the practice in those days as to the loaning of these containers, barrels, steel drums, to the small retailer to contain or hold the product while he was dispensing it to the trade? A. Ninety per cent they retained, either wood barrel or steel container.

Q. Under a loaning system? A. Yes.

Q. It has been testified here that that practice is still in vogue and that in some cases the steel drums 1527
are filled with the gasoline and if returned within a certain time, thirty days or so, that then they are given credit. What is the effect of that so far as compared with the loaning system? A. We do not sell the steel barrels.

Q. You loan them? A. We loan them all.

Q. And you want them back? A. We want them back. If they are not delivered after a certain length of time we will charge them.

Q. Does that billing system have the same effect as does the loaning system in reality? A. Do you mean billing the barrels?

Q. Yes? A. We have never billed steel barrels.

Q. But the companies that do bill them, does it amount to the same thing? A. It amounts to the same thing.

Q. The increased use of gasoline has caused what new container to be universally adopted as the proper facility or equipment for dispensing the gasoline to the public? A. An underground tank with a pump and the facilities with it.

Q. Is that now the universal method or practically the universal method of dispensing gasoline to the
1529 public? A. Practically the universal method. A few of the steel barrels are retained.

Q. What is the objection to the steel barrel as far as the dispensing is concerned? A. The storage is so small, and then you have to draw it off in some kind—either with cans, and so forth, and it is quite dangerous in some cases, you know, and they put in an iron pump in the steel barrel and that produced electricity that caused explosions on a number of occasions, to pump that out.

Q. It makes it dangerous? A. It is very dangerous.

Q. And you say particularly it does not give re-
1530 tailer sufficient storage? A. It does not give him sufficient storage.

Q. When this new facility or equipment came in use as the proper method of dispensing the gasoline to the public state whether or not the system of loaning which had been in vogue as to steel drums was continued as to this new equipment? A. It was.

Q. How long ago since these equipments as we have been calling them, curb pumps, began to be largely used? A. 1914 and 1915, about four or five years ago.

Q. How long has the system of loaning the equipments been in use? A. About four years.

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Q. Does your company practice this method of loaning such equipments to the operator? A. We do.

Q. Does your company engage in the marketing business to the consumer of its product? A. In some cases.

Q. What states do you market in to the consumer? A. In the six New England States, and New York State, seven states.

Q. Have you a registered trade-mark or brand under which you dispense your product to the public? A. We have.

1532

Q. What, if any, efforts have you made to make that trade-mark or brand of value to your business? A. By having a uniform quality, a good quality, and advertising and distribution through the long tank.

Q. Do you manufacture all of your gasoline which you sell? A. Not all of it.

Q. In case you purchase gasoline from others what, if anything, do you do in order to see that it is of as good a uniform quality as what you manufacture? A. We purchase it on specifications.

Q. Do you ever run it through your refinery? A. We do.

1533

Q. Do you do that to any great extent? A. Summer before last I ran over 500,000 barrels through our Buffalo refinery when I had to go out and buy it, at a very heavy loss.

Q. You bought it outside? A. I bought it outside. It was unfit for our trade.

Q. As a result of this care which you have taken and the advertising of your trade brand, has it become recognized as a good grade of gasoline through the territory where you market it under that trade name? A. It has.

Q. Do you regard that as a valuable business asset? A. Very valuable.

1534 *William R. King, Direct*

Q. In order to get it to the public under your trade name what, if anything, is customary to have upon the equipment through which it is dispensed, those pumping outfits? A. Do you mean in regard to these pumping outfits or our whole equipment?

Q. The whole equipment? A. We refine a large quantity ourselves in the refinery and we transport it either in bulk, boats or tank cars to what we call our distributing stations or storage plants, and those storage plants consist of warehouses, offices and storage tanks, equipments of tank wagons, both automobile
1535 and horse, horse drawn trucks or automobile trucks.

Q. And then for the dispensing of it what do you have? A. We have barrels, cans, small tanks.

Q. And what about these outfits, these curb outfits? A. Those outfits we consider part of our equipment. They are carried in our equipment as equipment.

Q. What would be the average cost of one of those stations which you established with tankage in order to supply the community? A. Do you mean curb pumps?

Q. No, I am speaking of the tankage? A. Of the ordinary distributing station?

1536 Q. Yes. A. They would vary according to the locality and the cost of property. They might cost $10,000 and they might cost $100,000 or $200,000, and some $500,000.

Q. And then as part of the equipment you would have a certain number of tank wagons? A. A certain number of tank wagons, yes, sir.

Q. Take a certain amount of storage, a certain amount of barrels, how many tank wagons would you have then in proportion to the barrels as a rule? A. Well, we figure an output of about three thousand barrels, a tank wagon for each three thousand barrels output.

Q. Then would you figure on how many pumping outfits you would probably require? A. Yes.

Q. About how many would you have for each tank wagon on an average? A. Well, it would depend on the size of the tanks a good deal; it depends upon the locality, upon the consumption in that district. You could hardly answer that truthfully or definitely.

Q. It is pretty hard to make an average? A. Very hard.

Q. Which costs the most, the tank wagon equipment or the pumping outfit equipment? A. The tank wagon equipment. 1538

Q. Any large proportion more? A. Very much more so. A tank wagon, an automobile tank wagon costs between $4,000 and $5,000, sometimes over that.

Q. And what is the average cost of these little curb pump outfits that you place? A. The one gallon formerly cost from $100 to $250 and the five gallon one now costs about $300 to $350 maximum.

Q. What effect has the establishing of these curb stations for the sale of gasoline and the tankage which they afford upon the cost of your distributing and supplying them through your tank wagons? A. It reduces the cost very materially.

Q. Suppose you had a customer, a retailer, a store 1539 of some kind who is buying from you in a steel drum; what would be the capacity, what is the ordinary capacity of a steel drum? A. About fifty-four to fifty-five gallons.

Q. Now, if he had sufficient trade there would it be possible for you to install a proper pump outfit with a sufficiently large tank so as to save so much expense in delivery? A. It would.

Q. Would that be a profitable investment for you instead of allowing him to keep the drum? A. It would.

1540

Q. And if he had a little old tank such as you have testified they use, which did not furnish an adequate storage, would it be profitable to you in the way of economy and the delivery, to furnish him a proper outfit with sufficient storage? A. Decidedly so.

Q. That would cause you less trips to supply him? A. Yes.

Q. What effect has this system of leasing and loaning these curb outfits had upon the number of such stations installed, especially in the rural communities? A. I hardly understand that question.

1541

(The question was then read as above recorded.)

The Witness: I do not understand that.

Q. State whether or not this leasing and loaning of curb pump or outfits has increased or decreased since the installation of such equipment? A. Well, that I cannot get, because—

Q. In other words has it caused the installation of more outfits than otherwise would have been installed? A. Oh, yes, decidedly so.

Q. Yes, that is what I thought. A. Yes.

Q. Does the leasing or loaning of such an outfit
1542 and establishing in that way a station for the sale of your product in the conduct of your business depend entirely on whether or not there is competition in the community? A. We pay no attention to competition.

Q. What is your method? A. Our method is to get our gasoline to the public in the most economical way possible.

Q. And do you lease and loan such equipment in territory where at the time there is no competition? A. Many a time we have leased and loaned it where

there was nobody else selling gasoline in this district but ourselves.

Q. Has this increase in the use of gasoline caused a demand for it in outlying districts? A. A wonderful demand.

Q. Where there was no supply? A. Where there was no supply.

Q. Do you have applications from communities or from persons in certain communities, especially outlying rural districts, to put in stations of this kind? A. We do.

Q. And what do you do in a case of that kind? 1544
A. Investigate whether there is sufficient business at the present time or possibly in the future which we have to look out for, for the wonderful increase in the rapid use of this thing.

Q. And then if you decide there is going to be sufficient business there what about the location then for it, do you consider that? A. We consider that very decidedly.

Q. What do you say as to whether or not this loaning of such equipment has caused more of them to be installed than is fairly necessary to accommodate the communities and to furnish the necessary storage for the products? A. I do not think there is sufficient storage to accommodate the public. 1545

Q. And is the demand still increasing? A. Rapidly, very greatly.

Q. What causes it to increase? A. New automobiles and the introduction of trucks which consume three times as much as the ordinary pleasure car.

Q. I am not sure if I asked you whether the installation of these—I asked you about a particular case, but generally whether the installation of these equipments through the rural districts has been profitable in the way of decreasing the expenses of sup-

plying the gasoline? A. It has. I can make one delivery of ten to twenty barrels where formerly I had to make ten to twenty deliveries and sometimes more.

Q. It has been testified to here that garages and other retailers of gasoline with a trade name or sign over the equipment, nevertheless buy and sell through that equipment other gasoline than the kind they are advertising. What do you say as to that? A. Oh, it is very rarely the case.

Q. If you knew that was being done in a case of your equipments or where your sign was used would
1547 you interfere? A. Do you mean those of loaned equipments or a garage we were furnishing?

Q. Any place where your sign was up? A. We would remove our sign immediately from a garage where they owned their own tank, and if it was our own equipment loaned we would remove our equipment.

Q. There was testimony here, I think by Mr. Jones, which applied more particularly to North Carolina, in which he stated that the percentage of loaned equipment was greater in the cities than in the rural districts. What is the fact in your district as to that? A. Well, in certain districts the percentage where
1548 they own their own equipment is much greater. Take for instance in the metropolitan district of New York, I do not know of one single case where we have loaned a tank in the City of New York. Outside of this, yes.

Q. When you get outside— A. Yes. You cannot have curb pumps in New York. The ordinance will not allow it.

Q. The streets are so crowded— A. Your ordinance does not allow it.

Q. The autos could not stop? A. The city ordinance would not allow you.

Q. Well, that is the fact, the streets are so crowded they could not stop? A. Yes.

Q. But when you get outside the cities into Westchester County and the surrounding territory you lease them? A. Yes.

Q. And in your territory the leasing and loaning is a greater percentage in the rural districts? A. In some of the cities outside of New York they do.

Q. Where they have curb pump methods in the city? A. Yes, where it is not congested like they are in New York and where the ordinance does not prohibit it. 1550

Q. Do you sell gasoline in the city here to the garages and other retailers? A. We do.

Q. Do they keep your sign over their equipment? A. They do, if they sell our gasoline.

Q. What do you say as to whether or not such garages usually handle and continue to handle one make of gasoline? A. In the majority of cases they handle one grade of gasoline.

Q. Do you supply garages here that own their own equipments, that you have been supplying for years? A. We do.

Q. And they sell it under your name? A. They do. 1551

Q. There has been testimony that a great many of these loaned equipments were put in unnecessarily and at places where they were unprofitable. What do you say as to that in your territory? A. Very rarely.

Q. What percentage of the installations you have made would you say have had to be removed, of the loaned equipment? A. Less than one per cent.

Q. What do you say as to the effect of this method or practice of loaning equipment upon competition in the sale of gasoline? A. It has increased it.

Q. Are there more companies operating now in your territory than there were a few years ago? A. I counted them up in the end of 1915 and there were 113. The last count we took of them in this year was 144.

Q. Has that increase been of large companies or of local companies operating in particular localities? A. Both; in numbers, more smaller companies; in volume, the larger companies.

Mr. Speer: For the present I can think of nothing further.

553

CROSS-EXAMINATION by Mr. Burdeau:

Q. Did I understand you to say that competition has largely increased in the territories served by the Standard Oil Company of New York? A. Yes.

Q. And you enumerated the number of companies now engaged in business in comparison with the number at some former period? A. 1915.

Q. Did I understand you to say that you believed that this increase in competition was in a way due to the use of the pumps and tanks? A. Partly.

554 Q. Will you explain in what way the use of pumps and tanks has contributed to this increase of competition? A. We go in a district to put in a tank or pump and to develop the business, and we did develop the business. Somebody else may have been there or we may have been alone. And in nine times out of ten somebody else would follow us with a tank and pump in close proximity.

Q. But that does not produce a new competitor. The competitor already existed, is not that a fact? A. Sometimes it is a new competitor.

Q. Can you give me any instance in which a new competitor has appeared on the scene to meet you

with a tank and pump proposition? A. A new competitor, yes.

Q. What? A. The Sinclair Oil Company to a great extent.

Q. That is a very large and powerful company? A. It is now.

Q. Do you attribute its existence to the use of the pump and tank proposition? A. Not entirely, no.

Q. Do you attribute its existence at all to the use of the pump and tank proposition? A. No.

Q. Can you name any company whose existence 1556
you do attribute to the use of the pump and tank proposition? A. No.

Q. In what respect then has the use of the pump and tank proposition contributed to the increase in the number of companies engaged in your business? A. When you develop a business competitors of every description come in, new ones and old ones.

Q. Now, you say you know when the practice was adopted by your company of leasing and loaning pumps? A. Yes.

Q. When was that? A. In about 1914, 1915, four to five years ago.

Q. And your company does business in the New 1557
England States and in New York? A. Yes.

Q. Do you remember what companies were also doing business in New England and in New York in 1914 or 1915? A. Yes.

Q. Will you please enumerate them? A. The large companies?

Q. Yes, the principal competitors of the Standard Oil of New York? A. The Gulf, the Texas—those are the only large companies in 1914.

Q. Which company, if you know, first adopted the practice of leasing or loaning pumps? A. I do not know.

1558 *William R. King, Cross*

Q. Do you recall what reasons prompted the Standard Oil of New York to adopt this practice? A. Yes.

Q. Will you please give them? A. We had reports from our field all over that some of the small jobbers were giving pumps and tanks away and it was simply history repeating itself, when the tank wagon was introduced for kerosene oil, there were tanks loaned and given away, innumerable ones. The only way they could get them in was to do that way.

Q. Your reason as I understand your answer was
1559 that you had heard in 1914 and 1915 that certain small jobbers were giving away pumps and tanks? A. Yes, and some of the larger ones.

Q. And that was making inroads on the business of the Standard Oil Company of New York? A. No, it took some of the trade.

Q. And giving away those pumps and tanks did take away some of your customers? A. Oh, sometimes there has been—

Q. You adopted this practice so to speak to fight the devil with fire, is not that so? A. No, the necessities of the trade were such that the increased business demanded some outlet for our naphthas.

1560 Q. The necessities of the trade demanded some increased output? A. Increased outlet for the public, the business increased so rapidly that we had to find some way of getting our napthas to the public.

Q. How did this great extension in demand manifest itself if there were not already adequate facilities to meet the public demand? A. The public could not be furnished. We have had applications many a time where they could not get the napthas they wanted when they were out.

Q. The demand had to show itself in the beginning, did it not? A. It did.

Q. In what way was that demand met? How did you realize the existence of that demand, if there were not adequate facilities for distribution then? A. We had complaints that people could not get gasoline.

Q. From what source did those complaints originate? A. From individuals.

Q. They complained that there were not enough service stations? A. Not enough places where they could get a supply of gasoline.

Q. You are engaged in the retail business? A. Yes.

Q. To what extent are you engaged in the retail 1562
business? A. Quite a large percentage we deliver to parties owning their own garages.

Q. Is it a fair question for me to ask you the total volume of gasoline trade last year of the Standard Oil Company of New York? A. I do not think I ought to answer that.

Q. You regard that as a business secret? A. Yes.

Q. Will you give me the percentage if you can of your purely private distribution to the individual owner of an automobile, what percentage of your business?

Mr. Speer: I think he gave it as about 1563
ninety per cent.

The Witness: No, I said that was the automobile. He wants to know what I deliver to private garages.

By Mr. Burdeau:

Q. To the private owner, the owner of a private garage, not in business? A. I should judge about ten per cent.

Q. What proportion of your business consists of sales to garage owners, I mean by that public garage owners and curb pump men and other retail dealers?

A. I could not quite answer that. I can give you the percentage of what we do through the long tanks.

Q. Well, if you cannot give me the answer to the question I asked, I will let you give me the answer that you want to give me— A. I do not want to give you any answer, only I want to see whether this is what you want.

Q. Well, you suggested it, Mr. King. A. Yes.

Q. What percentage of your business consists of sales to lesses of your equipment? A. In 1916, 48.9 per cent of our total business and about 68 per cent
565 of the automobile trade.

Q. Is economy a consideration with your company in the use of this tank and pump leasing? A. It is.

Q. Do you regard it as an economical means of distributing your product? A. I do.

Q. In what way is it economical? A. Because I can have sufficient storage so that I can keep the trade supplied in that locality and otherwise I would have possibly to make ten or twenty deliveries where I can make one delivery with a ten or twenty barrel storage tank.

Q. That is all true also of the case where a man owns his own pump and tank, is it not? A. Yes.

56 Q. And you have in the case of the leased pump and tank an investment of some three or four hundred dollars? A. Yes.

Q. And so as between the owned and leased equipments you are under a greater expense with regard to the leased equipment? A. When the party owns the equipment they put in very often meager facilities, not sufficient to keep the trade supplied.

Q. I am assuming for the purpose of my question that one man owns a five hundred gallon storage tank and your lessee has a five hundred gallon storage tank; it is cheaper for you to sell to the man who owns

in that case than to the man who leases from you, is it not? A. No cheaper, no.

Q. The actual delivery is the same? A. Yes.

Q. The cost of delivery is the same? A. The cost of delivery is the same.

Q. Absolutely the same? A. Absolutely the same.

Q. But in the case of the leased equipment you have the investment of some five or six hundred dollars? A. Yes.

Q. For which there is a profitable return? A. Yes.

Q. You said that there are practically no leased equipments in New York City? A. Practically no 1568
leased equipments.

Q. And you are satisfied with your share of the business here in New York City? A. I am—not.

Q. Do you believe you could get a larger share of business in New York City if you were permitted to make use of the loan and lease device? A. I think we could.

Q. Now, does your company sell its product in bulk to jobbers? A. Very little.

Q. It does in some cases? A. Very rare.

Q. Well, it has, has it not? A. Only in cases of necessity, to help them out or something like that.

Q. In such cases has there been any restriction as 1569
to the use of a separate brand or name in the resale of that product? A. Do you mean where they use our brand or not?

Q. Yes. A. We never allow them to use our brand, we never sell our brand of gasoline to them.

Q. But the same brand has been distributed through jobbers under a different name? A. So rare—it is very rare.

Q. But it has happened? A. Very rare.

Q. You are familiar generally with the distribution of gasoline, are you not? A. I am.

Q. And you know that most refiners do sell in bulk to jobbers? A. We do not.

Q. I say you know as a matter of fact that most refiners do sell in bulk to jobbers? A. Yes.

Q. And that the jobbers in turn resell under a different brand? A. That I do not know, no.

Q. Don't you know, Mr. King, as a matter of business practice, that jobbers who buy from refiners use their own brand in distributing the product? A. In a great many cases I understand they have, but I cannot speak as an actual fact. We do not manufac-
1571 ture enough that we have any to sell. We have to buy.

Q. Do you know Mr. Seth C. Drake of the Indiana Standard Oil Company? A. I do.

Q. How long have you know him? A. I do not think over three or four or five years.

Q. You became acquainted with him in business, I presume? A. Yes. I know his father very well.

Q. Do you know his position with the Indiana Standard Oil Company? A. I believe he is general manager of the sales department.

Q. Do you regard him as a good merchant? A. I do not think that is a good question for me to answer.

Q. Well, I am asking— A. Because I do not like
1572 to criticize anybody that is in the oil business. My idea of a merchant might be different from some of the others.

Q. It is perfectly fair for me to ask you—

Mr. Speer: I object to it as absolutely immaterial.

A. I would not like to do it because I might give you an opinion that would be detrimental to Mr. Drake.

Mr. Hayes: I really think that all the colloquy after the question should be stricken out.

Mr. Burdeau: I am satisfied my question 1573
was perfectly competent.

Mr. Hayes: The question was competent, but I think the rest should go out. Do I understand that is going to remain in?

Mr. Burdeau: Yes, everything is going to remain in.

Examiner Dunham: I stated when we began this investigation that I doubted very seriously if the Examiner had the right or would do right to refuse to permit a witness to answer any question what was asked him. I think the safer plan is to let the question be answered and let the objection be noted. But 1574
I think with this witness that modesty would suggest that he had a perfect right not to answer that question and criticize a competitor. However, if the question is insisted upon I shall rule that he may answer it. You object to it?

Mr. Hayes: No, I do not object.

Examiner Dunham: But I am very much inclined to think a man ought not to be asked to partially criticize a competitor.

Mr. Hayes: I do not object to the question so far as I am concerned. I do not think it was a proper question, but there was no answer 1575
made to the question and all ths stuff that Mr. King said afterwards and which was not responsive to the question I think should be stricken out.

Examiner Dunham: Would you gentlemen consent that it be stricken out?

Mr. Burdeau: No, for this reason. I think my question is entirely competent, and nine-tenths of the evidence in this case consists of opinions presumably from experts in the oil business. It is always competent to ask one

expert, as I believe Mr. King is, whether or not he regards another as expert in the business, for the purpose of contrasting their separate opinions and I would like everything in this record.

By Mr. Burdeau:

Q. Now, I will read—

Mr. Hayes: No objection to the question. I think, however, that there should be a responsive answer, if any at all or "I do not care
1577 to answer it." All that Mr. King said afterwards was not in response to the question at all.

Mr. Speer: In this respect I want to say as a further objection that we have not sought to prove by expert evidence whether or not this was a good business practice, as we have been objecting to that kind of testimony, and that for that reason an examination of Mr. King as to whether some other man may be an expert or not is entirely incompetent and immaterial.

Mr. Burdeau: I only venture to say that if
1578 you can point to one question out of ten that Mr. King was asked on your direct that is not calling for an opinion I will withdraw it.

Examiner Dunham: Will you read the last question?

(The previous question and answer were then read as above recorded.)

Examiner Dunham: Do you consent to striking it out?

Mr. Burdeau: No, I want it to remain.

Q. I am now producing from the official files of the Federal Trade Commission against Standard Oil Company from the official files of the Federal Trade

Commission a notice of motion together with certain affidavits filed in the case of the Federal Trade Commission against Standard Oil Company of Indiana, Docket 85, and I read to the witness the following on page three of an affidavit made by Mr. Seth C. Drake, subscribed and sworn to on the 13th day of September, 1919, before Marie C. Woolley, notary public—

Mr. Speer: Before that is read into the record we wish to object—

Mr. Burdeau: Just one minute. I think any attorney has the right to finish his question before an objection is received. 1580

Examiner Dunham: Just wait a moment. Let us have this proceed in as orderly a way as possible. When one counsel has the floor let him finish and then let the objections go in. Now, what have you to say?

Mr. Speer: But, may it please the Examiner, I am objecting to his reading here into this testimony the affidavit which has been made by somebody somewhere in reference to this matter and the witness has not been called and no opportunity given to cross-examine him, and it is endeavoring to get into the record here affidavits made by somebody else applying on this question, and I object to it as incompetent, immaterial and irrelevant and that it should not be allowed to be read into the record. 1581

Mr. Burdeau: I have not finished my question. If I read into the record anything—

Examiner Dunham: Wait a moment. Suppose the stenographer suspends and then we will let it be read and see if it is to go in.

Mr. Burdeau: My point is if I ask an objectionable question and your Honor entertains the objection and sustains it, you can strike out

1582 *William R. King, Cross*

the question and then it is out of the record, but I insist that in all courtesy I am entitled to frame my question the way I want to and complete it the way I want to.

Examiner Dunham: I think so.

Mr. Burdeau: And I want the question in so that any objection to my question will appear to the question as a whole.

Examiner Dunham: You may proceed.

Mr. Burdeau: Read the question as far as I had gone.

1583 (The question was then read as above recorded.)

Q. I now complete my question by reading what I was about to read.

Mr. Speer: Note the objection.

Q. "Affiant further says that he has been connected with the sales department of respondent for many years last past and was so connected with it when the practice of loaning and leasing pumps and tanks to customers was inaugurated and said practice of leasing and loaning pumps and tanks for a nominal consideration or free of charge was inaugu-
1584 rated by the competitors of the respondent and respondent thereafter adopted such practice solely as a matter of self defense to meet in good faith competition so tendered to it by its competitors; that such practice has been and is contrary to the judgment of the sales managers of respondent and is in their judgment bad merchandising." Now, do you agree or disagree with the opinion expressed in that affidavit, that it is bad merchandising? A. No, sir—

Mr. Speer: I want to object to it as incompetent, immaterial and irrelevant.

1645

Examiner Dunham: Let the stenographer note the objection with the reasons that he may assign.

Mr. Hayes: I think that in order to have the witness properly answer the question the entire affidavit of Mr. Drake should be presented to him and read to him.

Mr. Burdeau: I have not the slightest objection, if counsel wants the entire affidavit read, Mr. King can read it. (Handing paper to witness.) Please note that the entire affidavit of Seth C. Drake is tendered to the witness King.

1646

By Examiner Dunham:

Q. Does the witness wish to read the entire affidavit before he answers? A. I am perfectly willing to answer it on the part of the affidavit that the learned counsel gave me.

Q. You may answer the question.

Mr. Hayes: I will withdraw my suggestion.

The Witness: Will you kindly put that question to me again.

1647

By Mr. Burdeau:

Q. Boiled down I will repeat it in this form: Do you agree with the statement contained in the affidavit of Mr. Seth C. Drake in substance to the effect that the practice of leasing and loaning tanks and pumps for a nominal consideration to retail dealers is bad merchandising? A. No, sir, I do not think it is. I think it is good merchandising.

1588 *William R. King, Cross*

By Mr. Speer:

Q. He asked you if you agreed with his statement? A. No, I do not agree with it.

By Mr. Burdeau:

Q. What do you claim to be the merit of the lease and loan plan?

Mr. Speer: We object to it as incompetent, irrelevant and immaterial. It is not a question here of merit. It is a question of its
1589 illegality.

A. It gives us an excellent outlet for our product to the public.

Q. Mr. King, is not the owner of a tank and pumping equipment just as good an outlet to the public as the lessee of one of your equipments? A. The trouble is the owner will not put in the requisite storage. He economizes in every possible way and he will put in small storage and we cannot keep him fully supplied.

Q. Do you believe it is good merchandising to your company to finance the retail dealer and distributor of your product?

1590 Mr. Speer: We object to that as incompetent and as not being the fact.

Examiner Dunham: You may answer that question, if you can.

A. I think your question is such—

Mr. Nesbitt: I think he ought to reframe that question. It contains an imputation that his company is engaged in the business of financing the retailer. I think he can get at what he really wants without having that imputation in his question.

Q. When your company leases or loans a pump and tank to a retailer dealer for a nominal consideration you are financing that dealer to the extent of the value of that equipment, are you not? A. I am loaning him that equipment.

Q. You are financing him to the extent of the value of that equipment, are you not? A. No, I have him as a sort of an agent of ours, that is, he is really sort of an agent.

Q. You regard him not as an independent distributor? A. Oh, yes, I regard him as an independent distributor, except as far as what goes through that 1592
tank of mine.

Q. An agent is not an independent distributor, is he? A. Not unless he designates what his powers are.

Q. The agent is simply an *alter ego* of your company? A. Some agents with their duties designated can only do certain things.

Q. You deny then that you are financing the retail distributor to the extent of the value of the equipment when you loan it to him for a nominal consideration.

Mr. Speer: I object to it as a mere play on words.

1593

A. I put in a tank worth from $200 to $400 for the storage of our product. That is how it is. Now, if—that is all I do.

Q. And you can sell gasoline at the same price, cost of delivery and so forth, to the man who owns his own equipment? A. If he has the equipment and is willing to put in sufficient equipment, but he is not. We have never yet found but very few cases where he would put in sufficient equipment unless in large cities.

Q. You sell to every owner who will buy from you? A. Any one who wants to buy from us.

1594 *William R. King, Re-direct*

Q. Have you ever discriminated against a man who owned his own pump and tank because it was not big enough to suit your purposes? A. No.

Q. You are glad to get any one for a customer who owns his own pump and tank? A. We are glad to get any trade, but that is no reason why we should not get another one, where we can sell more through loaning a tank.

Mr. Burdeau: That is all.

1595 *RE-DIRECT EXAMINATION by Mr. Speer:*

Q. Mr. King, especially in the rural districts where the amount which may be sold through the equipment is uncertain, not only on account of present demand but on account of the danger of future competition, do you find that the operator is unwilling to go to the expense of putting in adequate equipment? A. In a great many cases.

Q. As a result of the universal ownership of automobiles and often by persons of limited means who have small and inexpensive garages, are there many private garages of that character that do not place as a part of their garage a proper tank and pump for the
1596 storage of the gasoline which they use? A. A great number. I did it myself. In the country I had a garage and kept my cars in it and sent them out to get their gasoline.

Q. They rely upon what source of supply in order to prevent the necessity for keeping a store or stock themselves? A. Curb pumps, service stations or a garage.

Q. Do you loan your equipment to private garages? A. No, sir.

Q. You were asked whether or not jobbers did not buy gasoline in the market and then sell it under a

brand of their own, and I believe you answered that they probably did. In that case if they have a brand which they are holding out to the public and seeking to establish a business under that brand, what do you say as to whether or not in purchasing the gasoline they require it to conform to certain specifications so that the product will not ruin the reputation of their brand? A. I could not answer that.

Q. You do not know? A. No.

Q. Do you have service stations as has been testified to here which are built and a number of pumps put in them to which the public are invited to come to 1598 get their supply of gasoline? A. No.

Q. That method of distribution is in use by some companies? A. Quite a number.

Q. Why do you not adopt that method? A. It is too expensive.

Q. Would that be a profitable method in small communities? A. Not at all.

Mr. Zechiel: On this question, you have the same general practice of buying your gasoline and pumps and installation and all that?

Mr. Speer: I think it might be better to ask him. I do not know whether it would correspond with all that has been said by other 1599 witnesses or not.

By Mr. Zechiel:

Q. You heard Mr. Young testify as to how the gasoline is bought by the Standard Oil Company of New Jersey and how it conducts its business in selling and distributing that product. Is the system of the Standard Oil of New York the same as that? A. Yes, somewhat similar.

Q. You say somewhat similar. In what respect is it different? A. I cannot pick out anything differ-

ent in any great degree. It is about the same—do you mean in handling it?

Q. Yes, your method of buying your gasoline or crude oil and refining it. A. It is about the same.

Q. And then selling it your gasoline products? A. It is about the same.

Q. You also heard Mr. Young testify with respect to the purchase and distribution of the pumps. Is your method the same, the same in that respect, also? A. Well, he said he purchased all of his from Gilbert & Barker. We do not.

1601 Q. Outside of that fact and the mere matter of the place where you purchase is there any difference in your practice from his? A. I do not think he testified in regard to purchase of tanks and pumps.

Q. He testified as to where he purchased them, how he distributed them, how he had them sent to him in carload lots. A. We have then in carload lots, yes.

Q. You do not remember his testimony. A. I did not hear him testify to that. Mr. Gatchell testified to that, but I do not think Mr. Young testified to that.

Q. Did you hear Mr. Gatchell's testimony yesterday? A. Yes.

Q. Is your testimony the same as Mr. Gatchell's
1602 in that respect? A. He said he shipped them sometimes over the line into other states.

Q. Yes. A. I do not know of any case where we shipped any over the line.

Q. You do not know that you occasionally shipped them over a line? A. I do not know that we have, because we have so many storages for these tanks that we only distribute in the locality within convenient driving distance, either auto or horse drawn, we would not take them across the line. I do not think I know of any case or ever heard of any case where we took them across the line. And we keep them in these vari-

ous warehouses where we have to distribute just in that close proximity.

Q. And it is true also, is it, of the questions that Mr. Hayes asked Mr. Gatchell yesterday with respect to what it takes to make up one of these equipments and how it is installed and so forth? A. Yes, they come in units and they have to be all put together—

Q. Practically the same as he testified? A. Yes, practically the same as he testified. He left out about the globe or did not testify to the globe. It comes from another party and Mr. Young put that in.

Q. Do you install all your equipments yourself? 1604
A. Yes.

Mr. Zechiel: I think that practically covers it.

By Mr. Speer:

Q. In the sale of your gasoline to the consumers you have separate sales organizations in the different states? A. We do.

Q. And that sales organization only sells in that particular state? A. In that particular state.

Q. And the oil stored in that state is sold only in that state? A. In that state.

Q. And that business is reported in the state? A. 1605
Yes.

Q. Each state is kept separate? A. Yes.

Q. And if there are any sales or transporting over the line it is without your knowledge or against your business practice? A. Yes, against our business practice.

Q. The same is true of the placing of the pumps? A. The same.

1606 *William R. King, Re-direct*

By Mr. Zechiel:

Q. I want to ask Mr. King just a question or two on cross-examination. Mr. King, with respect to this leasing and loaning of oil tanks and pumps what is your theory about it, is it used as a method of securing gallonage distribution, or is it used as a method of securing geographical distribution? A. Well, that is a rather difficult question, because I could not see how it could be used geographically, you know, because you would not put in a station unless you had an idea there
1607 was sufficient demand for it, and if there is a sufficient demand for a place then it would be a question of gallonage or—

Q. Then in each case it would be a question of gallonage? A. Well, your question is rather—I hardly understand it, you know, whether geographically or for gallonage.

Q. When you began the practice of leasing and loaning what was the object you had in mind that you wished to accomplish? A. I wished to get our gasoline to the public because there were not sufficient service stations or garages to serve the public and complaints came in from all over to us, why didn't we have
1608 facilities so that the automobilists could get their gasoline when they went out. They complained they could go out about twenty miles and would have to come back. They claimed they could not run truck, quite a number of people came to me, because they could not get a supply from us; and we got information from our fields that the farmers with their market wagons could not get a supply to come into market and return where the distance was any great amount, and with increasing business we had to put in facilities to get the gasoline to the consumer.

Q. That was true then you think both geographically, the territorial extent of the distribution, and also the gallonage in any particular locality? A. Well, I should say you might comprise the two together, but I cannot see how geographically has anything to do with it, to get it to the public.

Q. Well, here is John Jones who lives out here in a small community in New Hampshire; no pumps there at all. Do I understand it was part of your system and plan to go there into that community and put in a pump? A. Yes.

Q. In order to supply them? A. Yes. 1610

Q. Now, suppose in the same locality after several years there was a supply but an insufficient supply; you also placed some of those oil pumps and tanks equipments in order to increase the gallonage? A. Yes.

Q. Then you had a double-barreled motive, did you not, to spread out the area over which you distributed your gasoline, as well as the quantity in any particular area, is that right? A. Oh, yes, that is right.

Q. Then it was most geographical or territorial extent and quantity? A. Yes.

Q. Is that the plan that you had in mind, is that the thing that started you in the use of this system of distributing your products, leasing and loaning oil 1611 tanks and pumps? A. I do not think that is the kind of question to try to force me to say I had some idea which never appeared in my own mind at the time we did it.

Q. You did not think about it at all, then? A. No.

Q. Then what was it— A. We wanted to get our gasoline to the public.

Q. All you had in mind then was merely distribution of your product, gallonage distribution? A. Distribution and accommodation of the public.

1612 *William R. King, Re-direct*

Q. And you also had accommodation of the public in mind? A. Yes, we decidedly did.

Q. Have you always followed that method of distributing in order to get gallonage distribution and also to accommodate the public? A. We have.

Q. Have you ever installed an oil pump and tank under one of these leases because the customer in a particular locality refused to buy your gasoline from you, and you installed it say across the street or within a half a block of that equipment? A. I have never known of a case myself.

1613 Q. You do not know whether your company ever did that at all or not? A. I do not. To my knowledge, no.

Q. And the company might have done it a great many times, might it not? A. Very rarely, unless I would know.

Q. It is not impossible, though, is it? A. Oh, nothing is impossible in this world.

Q. So that it may be true that your company has frequently without your knowledge at all installed oil tanks and pumps under leasing contracts because the agent in that particular locality was unable to sell to the individual to whom he wished to sell A. That

1614 is a supposititious question—

Q. I am asking you whether you know? A. I do not know, no. Nobody could know that.

Q. That is all right, if you do not know? A. No.

Q. Are the storage facilities sufficient here in the city? A. In the City of New York?

Q. Yes? A. No, sir.

Q. Insufficient? A. Insufficient.

Q. To what is that due? A. They have not sufficient storage, due a great deal to the lack of the

ordinances is not giving them permits to carry sufficient. We have to take it out Sundays and nights to get them supplied.

Q. If your ordinances here permitted you to have more gallonage in storage do you think that that would adjust itself very readily? A. It would except for the great congestion in New York City; it would be almost impossible to have the storage and to have the automobiles stop. It would congest traffic so I do not think they ever could have storage enough in New York City.

Q. I understand you to testify that there are no 1616
leased equipments at all? A. Not in the City of New York that I know of. Outside of the City of New York, in Greater New York, yes, but I mean in the metropolitan districts of the City of New York, not that I know of at the present time.

Q. And it is your opinion that leasing of equipment is quite as common in the rural territories where there is no great competition as it is in the areas where there is a large competition? A. Yes, I believe it is.

Q. Is it more common in those areas? A. More common?

Q. Yes. A. We put in equipment any place where 1617
the amount of business has required it, you know.

Q. I am asking generally about installations.? A. I think you will find the numbers of them are much greater in the rural districts than in any of the cities.

Q. That is the percentage number you are speaking of now? A. Yes.

Q. And not the actual number? A. The actual numbers of the pumps and tanks.

Q. I am speaking of percentage, the number, comparatively? A. Comparatively the total?

1618 *William R. King, Re-direct*

Q. Yes. A. The percentage is greater in the rural districts.

Q. And in the less competitive areas greater than in the highly competitive areas? A. That I would not say.

Q. Do you think it would be the contrary? A. We pay no attention as to competition. It is a question that we want to get our product out.

Q. I understand you do not, but you know the competitive areas, as a matter of fact, do you not? You know where they are. A. Do I know where they
1619 are.

Q. Yes, you know where they are. A. Yes, I decidedly know.

Q. And you also know where you have installed your pumps under lease agreements? A. Yes.

Q. Now, you have both of those. Is it a fact that there is a greater percentage of installation in the highly competitive area or the less competitive areas as far as your company is concerned? A. There are so few points but what the competition is so severe that I can hardly answer your question.

Q. Do you mean competition is practically uniform all over your territory? A. Yes.

1620 Q. You have practically no distribution except it is under competition? A. None, except in some of the mountainous districts for a short time there is but they follow us in a few days or a few weeks, with somebody else and they get in there.

Q. Do you think the use of the curbstone pump, this leased pump, tends to protect the public as to the quality of the gasoline that the public can secure? A. I do.

Q. How is that effected? A. Simply that we have our trade-mark brand over those that we lease and it

is absolutely necessary to protect our trade-mark brand. There is no other grade of gasoline goes through that tank. They can have as many other tanks on their premises as they want.

Q. Do you think that laws requiring the use of marks on pumps and tanks would be easily accomplished?

Mr. Speer: I object to that—

A. I couldn't say what would go through the heads of our legislators, you know.

Mr. Speer: I object to the question as incompetent and immaterial. 1622

Examiner Dunham: Now, you can answer as elaborately as you wish.

The Witness: You know we have a very valuable trade-mark registered in Washington and I think that they require us that to protect your trade-mark you shall have some kind of a receptacle with the name on the outside designating the name of your trade-mark brand and registered in the Patent Office in Washington, and therefore we loan the tank and put our trade-mark brand on it, and I think it is absolutely necessary to protect our trade-mark brand to have that sign of 1623
ours on it.

Q. If you would answer my question—just read the question.

(The question was read as above recorded):

A. I could not say.

Q. You do not think that would be a feasible way to protect the public, by passing laws requiring people who dispense gasoline to use signs on their pumps and follow the signs? A. What would you have on the sign, the same as we have?

Q. The same as you have, exactly? A. I do not think it would be a bad practice at all.

Q. Don't you think it would accomplish practically all that needs to be accomplished along that line, to have it required? A. No.

Q. Do you think in spite of a law requiring that to be done you would still need your leasing and loaning system to make it efficacious? A. I think it would.

Q. Do you sell your equipment as well as lease and loan them? A. We have no organization for selling.

1625 Q. You do not try to sell them at all? A. If they want to purchase them we sell them.

Q. But you do not make any effort along that line? A. Not any concerted effort.

Q. I did not quite grasp why you say that the use of the lease or loan system tends to develop demand for gasoline products. I so understood you to testify on your direct-examination? A. Yes.

Q. How is that? A. Well, if you have a pump and a tank in any locality people will come to that pump and tank. If you do not have it they will not go to it. Just like you have a drug store on the corner. You may go into it for many little articles but you would
1626 not if you had to walk ten blocks for them. Now, where a pump and tank are in close proximity to your place you will patronize that pump and tank.

Q. Then you did not mean to testify that it increased demand for the product but merely increased the business of the garage man who had the installation? A. Oh, no, it increases the demand for it.

Q. Now, I do not understand that. A. For the simple reason if a man finds he cannot get his gasoline, in the old days he would have to drive twenty or thirty or forty miles, he would not buy the automobile nor would he put on a truck, for the simple reason they

refused to put trucks on until they could be convinced they could get sufficient supply and not long distances apart and that has increased the trucks, which is the greatest business and is going to be the greatest business in the future for these facilities which have been put in by the various companies, as they could be certain of getting their supplies.

Q. Then you think this business of dispensing gasoline has not followed the automobile industry but has pushed it? A. No, it has not. It has not pushed it but it has helped it to a great degree.

Q. Has it followed according to the demand or has 1628
it stimulated the demand in your opinion? A. For automobiles?

Q. Yes. A. I think it has stimulated the demand for automobiles.

Q. You think your method of distribution has stimulated the demand for automobiles and also for trucks and other gasoline users? A. Yes, and I think if you had not these facilities off the main road and so forth that there would not be room enough on the surface of the main road for the automobiles and trucks to run on, while the installation of these pumps off from the main road and on the by road where they can get them has helped the congestion of traffic. 1629
Otherwise I do not think there would be room enough on the main highways for the automobiles and trucks to traverse.

Q. That is you mean to say that if they had had to get all their gasoline on the main highways there would not be room enough? A. Yes.

Q. That is the reason you put your pumps on the by ways? A. We put them everywhere, highways and by ways. We put them indiscriminately.

Q. Do you think that that placing of them on the by ways drew the customers there? A. Yes, many

a man wants to go off on the highways and by ways in traveling and another influence, farmers come from different localities and merchants in making deliveries have to go off, they cannot keep on the highways in making deliveries.

Q. Is it the practice of your company to look for good locations for your equipments? A. It is.

Q. And in that respect you go off into the by ways? A. If there was sufficient business that warranted it and inhabitants enough, yes.

Q. But in looking for good places you would seek
1631 the by ways? A. Yes, we would seek the by ways.

Q. And as a matter of fact you do not pay any attention to competition at all when you make your installation; you just install them wherever you think you can sell gasoline and the public needs a pump? A. That is all.

By Mr. Speer:

Q. There was some testimony to the effect that those leasing and loaning these equipments leased and loaned them to irresponsible people which made it a bad thing for business. What do you say as to whether or not you do that? A. It is not a fact. We inquire very
1632 particularly into that. We would not have them represent us if they were not of good character.

Q. It was also testified as they did not own these equipments they were careless and did not take proper care of them? A. We watch that point.

Q. And is that a fact, that you have any trouble particularly on that account? A. None.

By Mr. Zechiel:

Q. You do not know of that matter intimately yourself, do you? A. Oh, yes.

Q. You get in touch with the actual pumps as they are distributed? A. I go out on the field and have meetings of my men and discuss the subject with all my men, the sub-station men and altogether at various times, at short intervals and I have them in New York and discuss the question very thoroughly.

Q. And in your experience you have never found any number of installed pumps that were put in that were not profitable to your company? A. No, we keep an exact record of all the pumps and the amount that passes through them, a daily record of those.

1634

By Mr. Speer:

Q. And there was some testimony that these loaned installations were unprofitable, many of them. What is your experience? A. I should say they were all profitable.

Q. How much, Mr. King, have you invested in these loaned equipments? A. Two and a half million dollars, two million four hundred and some odd thousand, to be exact.

By Mr. Zechiel:

Q. In that respect what per cent of your business is done through those pumps that are leased or loaned? 1635
A. Of our total business?

Q. Let us confine it to your total business to retailers of gasoline products? A. To our total business it is 48.9 per cent; to our automobile business about, I think, it is sixty-eight.

Q. Sixty-eight and a fraction I remember you said before? A. Yes.

By Mr. Speer:

Q. Can you tell the amount of your investment in tank wagons, approximately? A. Yes.

Q. How much is it? A. I should judge it is about six million dollars, that is in automobiles, but there is a greater investment in others, in the horse drawn; but we have about thirteen hundred automobiles and they are worth between four thousand and five thousand dollars apiece.

Q. And besides that you have horse drawn? A. We have horse drawn.

(Witness excused.)

1637 Whereupon, at 12:30, P. M., a recess was taken until 2:00 P. M.

After recess, 2:00 P. M.

RICHARD D. LEONARD, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct-examination by Mr. Schekter:

Q. What is your position with the Atlantic Refining Company? A. General manager, domestic sales.

1638 Q. How long have you been with the Atlantic Refining Company? A. Twenty-five years.

Q. During how much of that period have you been general manager of sales? A. Five years.

Q. Prior to that did you have a general experience in the marketing and sale of your petroleum products? A. Just tracing down the experience, probably to come in logical order, I went through the accounting end of our business, the purchasing end of our business, the cost keeping, then over into the refinery, in charge of our time keeping and the labor employment and then became superintendent of our mechani-

cal department or construction department. That led me into a supervision of the construction of our distributing stations and gave me an experience in the distribution of our products which led into my being made manager or general manager of our domestic sales.

Q. And your company is engaged in the business of refining and distributing? A. Yes, refining and marketing of petroleum products.

Q. And in what territory do you operate? A. Well, we operate in the tank wagon business in Pennsylvania and Delaware; in other general lines in tank 1640
car business or in shipments of barrels, steel barrels or wooden barrels and in our asphalt business we practically market east of the Mississippi. In addition we have a big export business.

Q. From what source do you secure your raw material? A. Our crude oil is purchased and produced by ourselves both from the Pennsylvania regions, the Appalachian, the Midwest and Mexico.

Q. Has it been your business policy and practice to endeavor to reach and sell to the ultimate consumer as well as to the distributor? A. Yes, I would say as a general policy our effort is to serve the consuming public and to reach them by the best means possible; 1641
where that means is through the medium of a dealer well and good; if not through a dealer, then direct.

Q. Can you tell us briefly whether there has been an increased demand for gasoline in the past five years? A. Yes, I would say that the increase in the demand for gasoline in the last five years is probably in fair proportion to the increase in the number of automobiles, which is practically ten fold.

Q. And prospectively do you consider that there will continue to be such an increase? A. The increase will come particularly in the use of commercial ve-

hicles, where one commercial truck will use six or seven times as much gasoline as one passenger car. The great increase is going to come from the widespread and general use of trucks as commercial vehicles.

Q. Will you please define briefly again the general problem of distribution of your products? A. On the gasoline and refined oils we distribute through the medium of tank wagons in Pennsylvania and Delaware. In addition we would have a tank car business or a barrel business; for instance in refined oils we
1643 have a large business with the railroads, where the refined oil would be shipped in barrels or in tank cars to the various railroads, wherever they may be, in New York State, New Jersey or Ohio or what other states. In our lubricants we have a large business direct with the consumers in Pennsylvania and Delaware and a large jobbing business. In our asphalt we market and distribute in practically all states east of the Mississippi River. Fuel oil logically finds its consumption nearer the sources of supply, that is if the demand is big enough.

Q. In the distribution of gasoline is a container required? A. Yes.

1644 Q. Formerly what form did that container take? A. Previous to the institution of distribution by the medium of tank wagons or tank trucks it was shipped in barrels. The requirements from a wooden barrel came to a steel barrel, on account of transportation requirements of the railroads.

Q. Did the barrel or steel drum serve the purpose of storage in addititon to transportation? A. Yes, with the average dealer or with the farmer or with the consumer that was using it, and he naturally held it as long as he could as a medium of storage.

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Q. And during such period of use for the purpose of storage do you know whether or not there was a charge or whether they were loaned? A. No, the practice is to retain ownership in the package, I am speaking now of steel barrels, and only to make a charge where the package is not returned within a reasonable time. In our instance we have always rendered a service charge after ninety days as an inducement to bring the package back.

Q. The natural development of the steel drum and barrel, in view of the increased trade has been the curb pump equipment?

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Mr. Burdeau: Objected to as leading and calling for a conclusion.

Q. What has the development of the medium of transportation and distribution after the steel drum? A. You are asking now for the development of the gasoline business?

Q. Yes. A. Tracing back in my own experience, from 1914, I would say that our preparations came in the form of having need, as our construction superintendent, to make a survey of the States of Pennsylvania and Delaware, in which time I visited practically every town of two thousand inhabitants or over and endeavored to make a study of the prospective or potential business in that vicinity for gasoline or for any of our products while I was at it. That resulted in the building of storage facilities consistent with what we regarded as the on-coming business. The storage facilities naturally suggested the additional facilities for delivery. The delivery naturally suggested the storage facilities to take care of the volume of business that we saw forthcoming. That is where the tank and pump linked in with the general process of distribution.

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1648 *Richard D. Leonard, Direct*

Q. In your general survey of the storage situation in the localities in which you operate did you find that compared favorably with the demand for gasoline? A. No, very unfavorably. Of course our criterion is the storage or distribution which had been established over a number of years for kerosene. I would say that even today as an example the storage for kerosene in Philadelphia and Pittsburgh is greater in point of distribution than the facilities for gasoline distribution all over the State of Pennsylvania. In other words in the Cities of Philadelphia and Pittsburgh for kero-
1649 sene, which represents relatively a small proportion of the total business, there are probably eight to ten thousand distributors. Now, that is pretty near the total of all distributors for gasoline in the States of Pennsylvania and Delaware. By distributors I mean those who are handling gasoline for resale.

Q. What was the percentage that you found as an average of storage supply for a period of one month? A. Well, the storage that you have reference to is a study which we made practically within the last six months or rather in the early part of this year in which we took the number of automobiles in the vicinity of any one of our stations, or as a matter of fact in any
1650 town in which any of our wagons was serving and from that we figured what the consumption of gasoline was in that vicinity and we lined up against that all of the known storage available in that vicinity to take care of that volume of business. Now, I can read to you what that was if you wish from a brief statement.

Q. Yes. A. We did it primarily to economize on our delivery service, that is to see where were the towns that inadequate storage was occasioning repeated trips to the same point where one trip would have been adequate.

Mr. Zechiel: Now, just a moment. My understanding is you are going to put on the record the results of this investigation?

Mr. Schekter: Yes.

The Witness: It is very brief.

Mr. Schekter: It is very brief and represents a general condition of inadequate storage, which, of course, the witness has stated is directly related to the problem of distribution.

The Witness: In most of the outlying points we 1652
endeavor to route our wagons so that they are covering a definite systematic route and will be in certain towns on certain definite days, and naturally we try to get the storage in those towns to be of sufficient size to cover that loss of time between the wagons calling there. Now we aim towards putting in the State of Pennsylvania, particularly in the outlying points, those points which are away from our refinery points, adequate storage to carry a three or four weeks' period. For instance, Allentown, which takes in the Bethlehem eastern section, Quakertown and that vicinity, shows that the peak month of business, as we figured it, was six hundred 1653
and fifty thousand gallons of business. The available storage was only two hundred and fifty thousand gallons, that is all the known storage for gasoline; that that figure was forty per cent of a month's, or rather from ten to twelve days' storage was available. We regard that as a very good point for increasing storage facilities. The percentage ran through the state: Bloomsburg, 42 per cent; Harrisburg, 36 per cent; Hazleton, 69 per cent; Lancaster, 35 per cent; Lockhaven, 41 per cent; Norristown,

1654 *Richard D. Leonard, Direct*

21 per cent; Reading, 47 per cent; Scranton, 45 per cent; Sunbury, 71 per cent; Williamsport, 32 per cent; Wilmington, 44 per cent; York, 44 per cent; Wilkesbarre, 31 per cent. A general average storage of 40 per cent of a month's stock. The general average is that over the state, and aside from cities like Philadelphia and Pittsburgh, the storage was about a ten or twelve days' supply.

Q. I would like you to explain, please, a little more fully, just how the question of storage in a
1655 designated locality is a matter for real consideration by you in your problem of distribution of your product? A. It enters into your expense of marketing. Your expense of marketing divides itself up roughly like this: 60 per cent of your expense is your delivery expenses, 20 per cent is normally your overhead office expenses, that is your main office expenses, and 20 per cent is your direct selling and station expenses, aside from delivery. Now that naturally points that you can not economize very much on your general office expenses, neither can you cut down very much on your direct station expenses, like managers and so forth, but your big effort in econ-
1656 omy has to come from your delivery proposition, which is 60 per cent and which is a more or less flexible item. Our study came down to a point of economizing on repeated deliveries to one point. As a general fact, it costs fifty cents a mile for motor truck delivery. Now, we figured that somewhat like this method, that a haul of ten miles for an average load of 500 gallons cost you one cent a gallon. Ten times 50 cents is five dollars, that is a cent a gallon for making that haul. Where we were making a haul and only making a delivery of 250 gallons, instead of costing a cent, it was costing us two cents

to make that same delivery, or where we were making a delivery of 100 gallons, emergency deliveries, some people being repeatedly out, that meant that it cost us five cents, with no real opportunity for any differential in price to make up for that emergency expense, therefore, our effort was to increase storage and make large bulk deliveries at any one point.

Q. Did that lead to any definite policy on the part of your company with relation to the curb pump equipment and storage? A. Yes, it led to a very definite campaign on our part to put that storage in either by direct sale or by lease or loan. 1658

Q. And the campaign was to put it in in the form of what kind of equipment? A. In the form of tanks and underground storage, which is normally required everywhere, and through the medium of the measuring pump.

Q. Do you regard the curb pump equipment as a part of your general equipment for distribution? A. Yes, we carry those that are leased or loaned or we carry those which are salable in our normal stocks. Those that are leased or loaned we carry as a plant item.

Q. Do you class it as a medium of distribution? A. Absolutely, we look on the tank or pump—I do not want to anticipate your questions, but I am hoping it will just clarify the situation—in the first place, it is a medium of wide and adequate distribution both in volume and over territory, that is, it reaches expanse. As our merchandising policy we are naturally always studying how to reach the automobile operator, naturally we are constantly studying the best means of reaching him with the shortest cuts, and where that is through the medium of direct service we accomplish it in that way. Where it is 1659

through the medium of a dealer we will invariably try to do it through the medium of a tank and pump, because that is the best known vehicle that we know of to accomplish the purpose of adequate, safe and reasonable service to the consumer for our particular product.

Q. Is there any question at all that the curb pump equipment as now in use is vastly superior to the former method of distribution through the steel drum and barrel?

1661 Mr. Zechiel: I am sure the government would concede that.

Mr. Burdeau: We will agree that the curb pump is the best available means of retail distribution.

Mr. Hayes: We all agree on that.

Mr. Zechiel: We all agree on that absolutely.

Mr. Speer: We approve and believe it is true.

Q. In the installation of this curb pump equipment, are you guided at all by the question of competition or what considerations do influence you? A. I
1662 think in the conduct of our business we take very strong cognizance of our competition and unquestionably the tank and pump has that feature to it, as well as any other branch of our business, that we have our eyes and our ears always open to the acts of our competitors.

Q. Is the installation, then, a question of competition or is it a question of a desirable location in the distribution of your products? A. The predominant factor, of course, is the distribution of our products. I think I could illustrate where the competi-

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tive feature comes into it by practical instances that have come under my own observation.

For instance, we study very closely from our statistical records in various sections what is the gasoline that we are selling either through the medium of garages or through the medium of direct service and through the medium of our stations by the number of automobiles and the average sale in any one month, dividing the number of automobiles into the gasoline sold. Now, where we find that comparing one territory with another that the average is very low, there it becomes the manager's duty to study 1664
what are the conditions that cause that low sale.

Now, we had a particular instance in the Wilkes-Larre territory where it was found that in a territory served by one of our stations and covered by one of our drivers or by one of our salesmen that his sales for the cars there were relatively low compared with the general average of the state or with men working in adjoining territories.

Now, I covered that territory with him and in the Town of Nanticoke and also in the Town of Plymouth, both of which are mining towns, and where we had the direct number of automobiles registered from that town, it was found where normally 1665
our sales might be from twenty to thirty gallons per car, in that town the sales ran down as low as eight and ten gallons per car. The picture that presented itself is this, that man was really confident in his own mind that he was getting the business there because he had the business of two garages that were in the town.

Nanticoke is located along the Susquehanna River. The Susquehanna practically bounds it on one side and the hillside on the other; the main street of the

town runs directly through it, parallel with the river. One garage was located down towards the river bank and the other garage was located upon the side of the hill. The entire traffic was through the main street of the town and all of the merchandising of that town was done on that main street. What had really happened was that our competitors, I will say the Maloney Oil Company, the Pure Oil Company and the Gulf Refining Company had all been good enough merchants to install on that main street their medium of service to the people that owned auto-
1667 mobiles in that town and the Atlantic Refining Company had not. We had to serve those people through the medium of two inadequate garages misplaced as far as service was concerned. As far as a competitive proposition was concerned, I considered it good merchandising on our part, having advertised our products, having created a demand for that product, to put it where the people could really get it, and I put two curb pumps at either end of that town and on the main street.

Q. You have engaged, then, in the installation of the curb pump equipment as a direct outlet for your
.668 gasoline products? A. Yes, we both sell the Gilbert & Barker outfits and we lease or loan them.

Q. You purchase the equipment from what manufacturers? A. Gilbert & Barker Manufacturing Company.

Q. Have you purchased the equipment from the Bowser Company? A. Yes, we have purchased from the Bowser Company.

Q. What, if any, restriction has the Bowser Company required in the case of their sale of pumps to you? A. Well, any purchases that we would make from them were for our own use in the establish-

ing under those lease or loan agreements and not for resale.

Q. Do you find in your experience there has been any delay in getting equipment of this kind which was ordered from pump manufacturers? A. Yes, I will say our experience is particularly with the Gilbert & Barker Manufacturing Company and that any deliveries for pump or tank equipment or practically all orders for pumps and tanks are seriously delayed at the present time.

Q. Do you regard that there is sufficiently adequate storage at the present time? A. Decidedly 1670
no.

Q. And do you think there have been installed more tanks than the trade requires? A. No, sir; I have pretty nearly answered that question by—my own picture is the on-coming rush of the demand by commercial trucks where practically, although the numbers of commercial trucks of the country today are probably not 25 per cent of the total number of vehicles, as a matter of fact, it is nothing like that, it is about 10 per cent, there are six million machines in the country as I understand it and there are less than six hundred thousand commercial trucks, and yet it is a fact that the commercial truck is con- 1671
suming today almost forty per cent of the gasoline. Now that transpiring in territory we do business in, we realize it is going to mean very adequate storage for the operation of that fleet of vehicles, particularly in the outlying points.

Q. I think it has already been described, but I would like you to state briefly on the record the component parts of the equipment, unless it may be agreed—

Mr. Zechiel: Yes.

Mr. Hayes: We will make an agreement.

Mr. Zechiel: I was just going to ask whether or not with your way of handling all your products, whatever you handle, that are lubricant products or products of oil and also your oil, whether you do not handle those in every particular substantially as Mr. Gatchell and Mr. Young have explained.

Mr. Schekter: No, I prefer not, if you do not mind.

Mr. Zechiel: I do not mind. I thought that was probably true.

Mr. Schekter: As to the equipment parts of a curb pump equipment and the necessity of installation of the same at the particular locations, it is admitted that the testimony will be substantially similar to that given by Mr. Young this morning.

Mr. Hayes: On examination by Mr. Hayes, so that you can identify that particular question.

Mr. Schekter: Yes.

Mr. Zechiel: Yes, I am sure that is true.

By Mr. Schekter:

Q. What is your policy with respect to the sale as opposed to the lease or loan of the pump?

Mr. Hayes: The stipulation, as I understand, is in here with reference to the question just spoken about.

A. We regard it as something that ties in very definitely with our entire merchandising effort or policy. I will say that our starting point is to create a demand for our product. We do that through the

medium of advertising or through the medium of the circulation of literature, through the medium of putting up painted bulletins along the highways, but in some way we acquaint the public with our particular product and ultimately we have to reach them so that they can identify our particular product.

Now, in that respect we are not a bit different from a man that is merchandising anything else, whether it is candy or shirts and collars. He has to create a demand and sell the consuming public. We have various channels through which we reach the ultimate consumer. A great deal of our business is 1676
done by direct delivery to them. We do a considerable business through the medium of dealers, where the dealer becomes a clearing house for us. We have established our own service stations, and those are probably the three major methods by which we do our business.

Where we do our business through a dealer we naturally have to consummate our merchandising effort by seeing that the public, when they do go to him for our particular product which we have sold to him and on which we spent money to create a demand, can identify it, and we feel that the tank and pump is the best known means by which we can 1677
identify and assure the public of getting a safe, accurate and reasonable measure of our proposition.

Q. And therefore your primary object is to install a curb pump equipment with the dealer at the proper location? A. Yes, the location itself is a very important part. I would say that the installation, for instance in the instance of the two garages at Nanticoke, where they were off the line of traffic and where it was inconvenient for people to go to them did not have any of the elements we like to see in the tank and pump proposition at all.

Q. In the installation of the equipment is it a matter of concern to you as to whether the equipment is purchased by the dealer or whether it is leased or loaned to him? A. I would say we are more or less neutral on that proposition. The greater part of our tanks and pumps are sold. The relation is almost four to one. But there are not any of the merchants to whom we sell a tank and pump that do not have a fair knowledge that we will lease or loan if the location is desirable.

1679 Q. And when you say the ratio is as four to one, you refer to the ratio of pumps sold being four to— A. Pumps sold are about four times the number we lease or loan.

Q. Do you find in your experience that you find a good location for the establishment and installation of a curb pump equipment where the owner or lessee of the location is unwilling to make the investment in an equipment or has not the capital to do so? A. I would say the general average is that a man has to have some period of time over which to pay for his material, pay for his installation. The problem of selling it to him is relatively simple. Our usual
1680 method of approach in selling a man a tank and pump is to point out to him that in that town there is a certain consumption of gasoline which is based on the number of machines that are operated in that vicinity. The measure of profit is practically fixed, that is, over Pennsylvania and Delaware there is almost an established retail price of 27 cents. The dealer's price is seven per cent off of that. His measure of profit is 11 per cent, practically. Now, in a given town or in a given section, if there is a certain available volume of business measured by gallons and by putting in that tank and pump that

man can share in that proportionately, your selling is to anticipate what he could sell and his rate of profit is so much and normally the rate of profit in one year will almost pay for the man's investment in the equipment.

Q. That is your agreement to him in the effort to sell him a curb pump? A. Yes, it is a big return on the invested capital. It is certainly a bigger return than almost anything else he could put his money in.

Q. Do you find in your experience, notwithstanding that argument, an owner or lessee of a desirable location is unwilling to make the investment? A. Unquestionably I would say that the instance at Nanticoke is fairly typical. The men that we put in those tanks and pumps with were men who had never thought of selling gasoline before. One, as I recall, was a cigar store man who was a jolly good fellow and who, we thought, everyone would like to go to, and we thought it was a good location. I would have considered it rather presumptive to try to sell it to him, but the actual result was we were very desirous of selling the people there where we thought we had created a market for our product and to cash in on the merchandising effort. 1682 1683

Q. And in the case of leased or loaned equipment is it your practice to give the dealer the option of purchasing outright? A. Our agreements provide that he has the privilege of purchasing on due notice.

Q. Do you market your product under a trade name? A. Yes, Atlantic gasoline.

Q. And do you regard that trade name as a valuable asset in your business? A. We measure it by the amount of money that we have spent in creat-

ing something that has been built up over a long period of time and with repeated and consistent advertising and merchandising and naturally it is a very valuable asset.

Q. And built up and maintained by maintaining a good, uniform quality of gasoline? A. Absolutely.

Q. Do you find in your experience that a consumer of gasoline prefers a particular brand or does he buy indiscriminately? A. Oh, I would think that the average consumer of gasoline is very much wedded to a particular brand.

1685 Q. Is there— A. A man does not want to change from one grade of gasoline to another. If he is getting good satisfaction out of Texas or Atlantic or Gulf, in all probability he is going to stick. You are asking about a consumer. Yes.

Q. In the marketing of your gasoline is there any way in which you can assure the public and assure yourself that the public is getting your brand of gasoline under your name than by the use of this equipment with your name labeled on it? A. It is a liquid material. We would either have to put it up in packages duly sealed and labeled or put it in some form of receptacle which would contain it in larger

1686 quantities through which it could be measured out under some identifying mark. Now, the pump and tank is that. Practically all the pumps and tanks— I will say invariably the tanks and pumps, or the pumps, at least, we sell or lease have a seal on it with our name and also a globe attachment illuminated, that has our name on it. I would say, also, that the man we do sell that he regards that as part of his purchase, that he wants the pump with our name on it, because he wants to cash in on the proposition.

Q. Irrespective of the question as to whether you have sold him equipment or loaned him equipment, is it the fact or not that he requests that you loan him a globe so that the public may know he is selling Atlantic gasoline? A. He wants everything that would go with the proposition that we have sold him. The globe that we sell them is not in the purchase price. That we practically loan a man, regarding the investment in the globe as good advertising.

Q. Do you find, Mr. Leonard, in your experience, that a retail dealer of gasoline generally adheres to one company or does he change often and promiscu- 1688
ously? A. I would say the changes are more on the part of the oil companies rather than on his part. That is very frequently for matters of credit or because we will consider it inadvisable to give a man beyond a limited amount of credit, whereas another company might have an entirely different viewpoint. We will drop a man and another oil company may take him on. It may be that after they have learned their lesson, he will come back to us. But the changes come about in that way. You only learn that, there is nothing inconsistent about that, you only learn about a man by dealing with him.

Q. Given a satisfactory service to the retail dealer 1689
and satisfactory credit by him to the oil company, would you say that it was generally your experience that the dealer adhered to the one oil company in the purchases of his gasoline? A. I would put it this way, Mr. Schekter, that by far the biggest percentage of the people we are dealing with, ranging anywhere from 80 to 90 per cent, are people that we have been dealing with or serving over a long period of time and that they do not change, but that does not mean that they will not deal with another com-

pany. There are any number of companies that deal with us as well as dealing with another.

Q. You have testified that the proportion of sales of equipment made by you far outnumber the leased and loaned. Can you tell us approximately the percentage of the dealers to whom you have sold curb pump equipments who still purchase their gasoline of your company? A. The answer would be more or less general, but I would think the same range, anywhere from 80 to 90 per cent of the people we have sold outfits to are still people we are doing business with.

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Q. It has been testified to here that it is a practice and some witnesses have said it was the common practice for a retail dealer to undertake to sell through a trade name of a company the product of another company. A. No, I do not agree. I think that that is not a predominant thing at all. Those things may happen among irresponsible dealers, but they are always subject to immediate correction if it comes to our knowledge and I think the average company does correct it immediately.

Q. And the correction consists in what? A. In their having the man adhere to his contract of having that receptacle used for your material or it is removed.

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Q. Do you regard the— A. Of course there are occasions—I do not want to modify the testimony excepting that there are emergencies arise where a man would be very foolish to permit his trade to go unserved simply because he could not reach the Atlantic wagon in time when another wagon was available. We would regard in such cases that it is entirely within the good judgment of a man to take the gasoline that is immediately available.

Q. Would you regard the number of those cases as many? A. No, I would regard it as rather practically as something that is not a factor at all in the conduct of your business.

Q. Would you say it is practically negligible? A. The uses of your equipment for—

Q. For oil of other companies? A. I would not say it is negligible. I would say this, that occasions do arise and you take care of them, although I have not any idea of the number, whether—but it is a negligible proposition when it is a question of removing outfits for that reason. 1694

Q. In your opinion has the practice of selling and leasing and loaning curb pump equipment increased or decreased competition? A. I think the establishment of a tank and pump at any point is a medium of creating business. I would liken it very much to the establishment of the United Cigar Stores on any prominent corner; it is an invitation to buy, and whether you know it or not, you are increasing the consumption of cigars. Just so, I would regard the installation of a tank and pump at any convenient point as a medium for the creation of a demand for your particular products and the consumption of gasoline in general. 1695

Q. Do you believe there are more jobbers in the business today than there were three years ago, say? A. Yes. Of course, the increase in the number of people going into the oil business is notorious. Every newspaper has a list of charters that are going in. But I would say that the thing which is most noticeable to me is the expansion of the smaller man, that where a man was previously doing a business localized at one point, he is now doing a business from several points.

1696 *Richard D. Leonard, Direct*

By Mr. Hayes:

Q. Why is that? A. Purely because he has found a convenient medium of meeting the demand and he finds the tank and pump is a very adequate means of expanding his business.

By Mr. Schekter:

Q. The service station is likewise a medium for reaching the consumer? A. You are speaking of a service station operated by the larger company itself?

1697 Q. Yes. A. Oh, yes.

Q. The element of cost of that, however, is prohibitive in sparsely settled districts? A. Yes, you have to have a service station where there is a big volume of business and at a location where there is a big passing trade, a big vehicular traffic.

Q. A curb pump equipment serves the purpose of a service station in the more sparsely settled localities? A. It also serves the purpose in the larger cities. Take a city like Philadelphia, Philadelphia covers an enormous area. There are certain streets that predominate as mediums of traffic. For in-

1698 stance, Broad Street is a conspicuous street and we regard Broad Street as a very good street for service stations. We also regard Walnut Street as a good street for service stations. But there are hundreds of streets in Philadelphia over which cars are operating and where the pump is unquestionably the medium of service.

Q. I have taken from the notes of testimony specific cases of complaint mentioned by witnesses in the testimony offered by the Commission and I have asked you to ascertain the accuracy of the testimony given by the witnesses, and, Mr. Examiner, with-

out waiving my objection to the testimony given by those witnesses on the ground that it was purely hearsay testimony and not of their own knowledge, I desire at this point to offer in rebuttal the testimony of Mr. Leonard as to the specific cases of complaint. You might take the case of Mr. Norman, Wilmington, Delaware, first. A. Do you want to recite what the testimony was and I give the answer? That was a case in which Mr. Hearn testified that he had lost the business of the Norman Company on account of our leasing or loaning the outfit.

Q. Yes. A. The information which I secured at 1700
Wilmington—

Mr. Burdeau: That is hearsay, too, is it not?

Mr. Schekter: No, it is direct from Norman.

Mr. Burdeau: Yes, but it is hearsay.

By Mr. Zechiel:

Q. How did you get the information? A. Through the medium of our manager and the company itself.

By Mr. Schekter:

Q. You are testifying here as to the exact facts 1701
and circumstances surrounding and leading up to the installation of the equipment with Mr. Norman, as shown by the correspondence and your records? A. Yes.

Mr. Zechiel: I shall object to the admission of the evidence, Mr. Examiner.

Mr. Burdeau: I do not object to it at all. I am willing to let it go in, but I want it pointed out that the criticism was made that we were introducing hearsay evidence and this

is nothing but hearsay. I do not object to it.

Mr. Schekter: I disagree with the contention of the attorney, because this is the witness's own knowledge of a transaction which he himself negotiated with a retail dealer.

Mr. Hayes: With Mr. Schekter's permission, as I understand it, the question is asked and the objection made and the reason stated for the objection and then the witness proceeds to answer the question.

1703 Examiner Dunham: That is the safest rule, it strikes me.

Mr. Hayes: Just so it gets in and is not stricken out.

Examiner Dunham: Let the witness proceed.

Mr. Hayes: Mr. Schekter has not finished yet.

Examiner Dunham: Did you want to say anything?

Mr. Schekter: I assume the reporter took my statement that the witness is testifying of his own knowledge—

1704 Mr. Burdeau: Let us have Mr. Schekter sworn on that proposition. The witness's own testimony is what we are bound by.

Examiner Dunham: I do not see how in the world the reporter can take you when two or three are talking at once. Have we reached a point where the witness can answer? If so, proceed.

Mr. Zechiel: Just a minute before we go any further. If I am to understand that the statement of the attorney for the Atlantic Refining Company is to be taken as the facts, that Mr. Leonard is testifying from his own in-

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formation that he actually gathered by direct investigation on the grounds, then I do not approve of that. I do not believe that that is the fact and I do not think the record ought to show anything like that unless Mr. Leonard himself is willing to testify that he did get his evidence in that way. I am perfectly willing that it shall go in as the facts are.

Mr. Burdeau: I suggest we find out how he got that information.

Mr. Hayes: You will get it.

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The Witness: Let me state exactly what I did. Mr. Schekter notified me of these various questions that came up. Now, in the instance of Wilmington which was adjacent to Philadelphia, on Saturday I was in Wilmington and I discussed the proposition with our manager at Wilmington station that is responsible for this installation. He told me exactly what the circumstances were regarding this installation. In addition to that, he confirmed it by having a letter from Mr. Norman, who is the principal of the proposition, stating exactly what the circumstances were, which letter I have here.

By Mr. Burdeau:

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Q. Let me ask just one question. Until you talked with those gentlemen on that date, you knew nothing about this transaction, did you? A. What do you mean, that I did not know anything about it? Do you mean I did not know there was any question about it?

Q. Until you talked to those gentlemen on the occasion you have just mentioned, you did not know anything at all about the facts and circumstances surrounding the installation of your pump? A. I will

say no, that particular pump I did not know anything about, but I did know something about the question—

By Examiner Dunham:

Q. Now, let us get at this in a systematic way, if we can. The record ought to be as nearly correct as we can make it. Now, do you submit this proof as facts that you know yourself or the facts which you relate that were given to you by those who operate that plant down there? A. If you regard a
1709 letter over that man's signature, then it is a fact as presented to me by him. My facts are based on the best mediums of information that I can secure in the operating of a big widespread business. It is impossible to be in physical contact with every particular transaction. My contact comes through the medium of our representatives and through the mediums of the documents that pass through my own personal hand.

Q. Could you make the statement that you are going to make independent of the information that you got from those people? A. As I understand the question, Mr. Examiner, it was the fact that the Hearn
1710 Oil Company had lost the business of the Norman Automobile Company because we had installed a tank and pump. That which I wish to present to you is evidence that they did not lose the business of the Norman Automobile Company and that they have been serving them regularly for the month of November.

Q. Now, do you know that of your personal knowledge that they did not lose the business? A. Only through the evidence of Mr. Norman, showing me in his letter the invoices which he has received for the deliveries made to him.

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Q. Now, Mr. Leonard, if you are depending on him and you are going to give facts as showing to you, would not Mr. Norman be the proper man to swear to those facts? You are being permitted to testify— A. You are getting me into technicalities which I am not conscious of. That is for our attorney to decide.

Mr. Hayes: Off the record, please—

Examiner Dunham: Do not take this.

(Whereupon an informal conference ensued.)

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Examiner Dunham: Let the witness proceed with his testimony and if you have objections, let them be noted and the one who sums up finally will dispose of it.

The Witness: This installation with the F. B. Norman Company was made on the recommendation of our manager, Mr. O. C. Hardy. The indication is that Mr. Norman was extending his garage facilities and putting probably a forty thousand dollar investment in, in an extension to his proposition and had solicited from us a curb pump outfit along one of the main streets in Wilmington. We considered it as we consider all other propositions, at our main office, and we approved of the installation and had a formal agreement drawn up which was negotiated by both parties and the tank and pump installed. As I understand the point was that this was a customer of the Hearn Oil Company and that they testified that they had lost the business of the Norman Company due to our installation.

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Our investigation of it developed that Mr. Norman writes to us as follows:

"For your information, the Hearn Oil Company invoices to us for gasoline and oil for the past three

(3) months are as follows: September, $230.85, October, $112.00; November 1st, $24.30; November 4th, $36.45; November 5th, $19.44; November 6th, $19.44; November 11th, $19.44; November 22nd, $19.44; November 20th, $24.30; November 24th, $24.30.

Trusting that this is the information desired and also that we solicited from the Atlantic Refining Company to have their tank installed for advertising purposes, we are

Very truly yours,

1715 F. B. NORMAN,
President."

That indicated to me that this tank and pump was solicited by this company, that it was installed practically at their request and with our approval on account of its being a good point on a main street in Wilmington and it did not mean the loss of business to the Hearn Oil Company, as they have been served by them regularly all during the month of November.

By Mr. Schekter:

Q. Will you take the next incident? A. The next case that I have a definite report on comes from the
1716 western part of the state, which are reported to us by Mr. Patterson; David Mitchell, Monaca, Pa. If it meets with your approval I will state the facts as gathered through our Pittsburgh agency.

Mr. Mitchell was formerly associated with his father in the Mitchell Lumber Company at Monaca, Pa. At that time they had one automobile and occasionally purchased a little gasoline from the Freedom Oil Works Company to operate the machine. He later built a garage and started business as the Mitchell Motor Company, and we are the only concern that has ever sold the Mitchell Motor Company. We installed

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a T-8 pump and a 20-barrel underground tank for them. Mr. Mitchell advised that he was never solicited for any pumps or tanks by any concern excepting our own and as he had a good location we made the installation. He further states that he is purchasing our gasoline for the reason that he has a demand for it.

In that instance our investigation shows that the Freedom Oil Company never did have the business of the Mitchell Motor Company and that our installation of a tank and pump did not mean any loss of business to them.

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The East Bradford Auto Service, which I understand was a statement made by the Kendall Refining Company, that they had lost the business of this garage on account of our installation. The original equipment of this concern was an old one-gallon Bowser curb pump, which they owned. An automobile backed into this pump and broke it. The Kendall Refining Company immediately installed for them on a loan agreement a five-gallon pump and a five hundred and fifty gallon tank. The garage man stated that he had calls for both Kendall and Atlantic gasoline and if we cared to install a pump he would handle both grades, giving the public their choice of the products.

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In September of this year we installed a T-35 Gilbert & Barker curb pump, putting this pump on the garage man's tank. All we have there is the pump. Both our company and the Kendall Refining Company supply this garage with gasoline, each of us filling our gasoline into the tanks on which pump is connected; that is the Kendall Company putting gasoline through its pump and we putting gasoline through our pump. The Kendall Refining Company had their equipment installed before we put ours in. That does not mean to me that they have lost the

business of the garage but that they are still doing business through their own pump.

By Mr. Zechiel:

Q. That was also just a report from your manager? A. That is a report from our manager covering the circumstances of the installation.

The Wampum Store Company. On November 19th, 1917, we installed there a T-8 pump and one 550-gallon underground tank. We did not take this trade from the Freedom Oil Works. We have always en-
1721 joyed a part of this business. To encourage the sale of gasoline at Wampum and for the convenience of the automobile public we made the installation. At different times we had intended removing this equipment for reason that the Freedom Oil Works Company from their Newcastle station have made deliveries of gasoline through this equipment at various times. Should our equipment be delayed in reaching Wampum the Freedom even yet make deliveries into our tank. We have complained to the Wampum Store Company garage explaining to them it is unfair to use our equipment in that way. That report indicates to me that they are assuming that they had that business
1722 when they did not.

The United Motor & Garage Co., 3868 East Street, Pittsburgh, Pa. This as I recall it is a statement made by Mr. Willock of the Waverly Oil Company.

This concern is operated by Arthur F. Schmidt and Brother. On September 24th, 1919, we installed two T-8 Gilbert & Barker curb pumps and two 15-barrel G. & B. underground storage tanks. This garage was formerly owned by a man by the name of Earl Halliwell, who bought his products from the Waverly Oil Company, Pittsburgh, Pa. About September 24th, Arthur F. Schmidt and Brother purchased this garage

from Mr. Halliwell. Our representative had an acquaintance with Mr. Schmidt before he purchased the garage and when the sale was consummated Mr. Schmidt immediately gave the business to us, even before the tanks and pumps were installed by us. Mr. Schmidt preferred Atlantic products to those of the Waverly. He has a good stand and on account of his being so well located we installed the pumps and tanks, but the installation of the equipment was not the cause of taking the business from the Waverly people, it was a personal choice of Mr. Schmidt to give us the business. The reason for Mr. Schmidt's 1724
preference is that previous to his having bought this garage, he was associated with a firm by the name of C. Dollhoff & Sons, who are in the real estate business in this city, and they buy all of their gasoline and motor oils from us to operate their automobiles.

In this connection, advise that Mr. Schmidt has been instrumental in our securing the business of the Hoffman garage and other concerns in this city, previous to his getting into the garage business.

By Mr. Zechiel:

Q. You are also just reading from the report? A. Reading from the report of Mr. Patterson, our Pitts- 1725
burgh manager.

By Mr. Schekter:

Q. Then he is your Pittsburgh manager? A. Yes.

Q. And those reports have been received by you in the regular course of business? A. Yes.

By Mr. Burdeau:

Q. Those reports were sent, however, after you learned of the testimony given on the witness stand? A. These reports are investigations as to the reports made by other witnesses.

Q. And in order to meet certain testimony in this case? A. No, sir. Mr. Patterson has no knowledge of the testimony. I simply asked him for a statement under what circumstances these installations were made.

By Mr. Schekter:

Q. Go right on with your next case? A. I think it ought to be understood that we are not trying in any sense to mislead—

Mr. Zechiel: Absolutely not, Mr. Leonard. Do not
1727 think that for a minute that any of us think so.

Mr. Burdeau: No. I want it understood that I am not insinuating anything of that sort.

The Witness: Cherry & Kelly, Altoona, Pa. This is a statement made by the Bowser Pump Company, in which I believe the allegation was that we installed these pumps and that they were removed within a very short time.

The father of Mr. Cherry is a man of considerable wealth and he built a garage for his son and purchased from us on April 7th, 1917, two tanks for which they paid. We loaned them two curb pumps on the same
1728 date. Young Mr. Cherry later went to war and his father secured the service of F. M. Kelly to assist in running the garage during the son's absence. In August, 1918, which is only a year and a half later, they discontinued handling gasoline and returned our pumps to us. The tanks which they owned are still at the garage. Later Mr. Cherry withdrew from the concern and it is now being operated by Mr. F. M. Kelly, who does not sell gasoline or has he sold it since 1918.

Q. Go on with your next instance? A. This would indicate that it was more or less hearsay evidence on the part of the Bowser man. Now, that is all I have any report on.

There was a case of H. M. Stahler of Rockville. That is a small town up along the Susquehanna. I secured the circumstances of that installation from our Harrisburg manager by telephone, but asked him to secure a definite statement from Mr. Stahler. That it was impossible for him to get and give me in any written form, therefore, anything I would give you would simply have to be by what has transpired between our manager and myself. However, the entire circumstances are simply parallel practically to these.

Now, there is a final statement made here by Mr. 1730
Patterson that to the best of his knowledge the Waverly Oil Company do not loan outfits.

I think probably a little review of the circumstances of just why a competitor of that kind would not loan an outfit or is not interested in it would really help the entire situation.

The Waverly Oil Company is an independent oil company operated with a refinery at Pittsburgh. Now, I think I know from Mr. Willock's own word just what his policy of doing business is. He has a fixed quantity of crude oil supply—

Mr. Zechiel: I think I will have to object to 1731
that sort of testimony. If the defense wants to prove that, I think they had better put the witness on so that it is not so obviously hearsay. My point is not one of doubting what Mr. Leonard would say because—

Mr. Schekter: To save time I will admit that the testimony be excluded. I did not ask for it. That is all I have to ask.

By Mr. Hayes:

Q. Mr. Leonard, your company's idea is to sell its products? A. For a profit.

Q. For a profit, naturally. And to whom? A. To the consumer, is our ultimate aim, to get our proposition.

Q. And you by the various advertising methods attempt to create a demand among the consumers for your particular products, do you not? A. That is the entire purpose of our newspaper advertising and our painted bulletins, and all the other mediums of advertising that we have.

Q. And you want to get your product to the ultimate consumer practically in the same method, we will
1733 say, as the Quaker Oats Company get their products to the ultimate consumer? A. Undoubtedly, by some means of identification.

Q. Then as I take it the filling stations, the service stations and the garage are the means which the different oil companies have adopted— A. Excepting where they make direct deliveries.

Q. Excepting where they make direct deliveries, of course, to get their products to the ultimate consumer, is that it? A. Yes.

By Mr. Speer:

Q. And even when you deliver to the private garage
1734 from your tank wagon is there any name on the tank wagon to indicate that it is yours? A. Yes, it is very conspicuously displayed.

Q. In reference to your purchase of the Bowser pump, is it not the express agreement with the Bowser Company that you shall not resell the pumps you get from them? A. It was at the time of the purchase.

Q. But that you shall lease and loan them to your own customers? A. That we should use them in our own mediums of service.

Q. Without selling them? A. Yes.

Q. They did not want you to interfere with their sales agents by allowing you to sell pumps? A. It is

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a very logical thing on their part, that they had an established organization and did not want us to interfere with it.

By Mr. Schekter:

Q. Do you recall whether in the distribution by means of steel drums and barrels that your name was on the barrels and drums? A. Yes, the package was identified with our name.

Q. I do not know whether I asked you whether you purchased the different parts of the pumps in bulk and stored them prior to distribution to your customers? A. The two main units, which are the pump and the tank, are purchased from the one company or from different companies. The pipe and fittings and other articles necessary for the installation are apt to be purchased locally.

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Mr. Schekter: You may cross-examine.

CROSS-EXAMINATION by Mr. Burdeau:

Q. What is your experience in retail distribution? A. We do quite a bit of retail distribution.

Q. Do you personally come in contact with the individual owners of automobiles? A. Very much.

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Q. And you know their practices about the selection of gasoline? A. I know their general disposition.

Q. So that when you testified that the ordinary, average owner of an automobile was particular in the selection of the grade of gasoline he used, the brand that he used, that is based on your personal experience with automobile owners? A. It is based on this, that I have made personal inquiry from dealers as to whether gasoline actually was bought by name and the assertion is yes.

1738 *Richard D. Leonard, Cross*

Q. That is a certain proportion of the consuming public demand gasoline of a certain brand? A. Yes.

Q. Do you happen to know what the proportion is? A. The proportion would be measured I presume by what you regarded as the business we are getting as the result of our advertising effort.

Q. I mean is there any way in which you can approximate the proportion; assume one hundred automobile owners; now how many out of that one hundred would be particular about the brand of gasoline they used? A. I could only measure it, Mr. Burdeau,
1739 on the assumption that those people who were using our gasoline were using it because they desire that particular brand of gasoline.

Q. Your experience then is confined to people who use your brand exclusively. You do not know anything about the habits of the other public consumers of gasoline? A. Yes, I know a great deal about the habits of consumers in general.

Q. Well, I say you take one hundred automobile owners, including those who do not use your product, about how many out of the one hundred would demand gasoline by brand or name? A. Well, I would think that—of course it is purely an assumption—
1740 but ninety per cent of the people who are using gasoline today are using a gasoline of their preference.

Q. Well, upon what do you base that assumption? Have you any tabulation of instances presented to you? A. Unquestionably our entire statistics are built up on what we are cashing in on our own investment in creating a demand for our particular product.

Q. But have you any statistics from which you can say that the number of people out of every hundred users of gasoline who will insist on having gasoline of a given name or brand? A. Now, I have answered your question in this way, that I assume our own sta-

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tistics are as good as any other oil company's statistics and—

Q. What are your own—

Mr. Schekter: Let him answer.

Q. Surely. I do not want to interrupt? A. Your question is what assurance have I that there is a demand for any particular grade of gasoline. My answer to you is that our own percentage of the volume of available business is an indication to us of the demand of our particular grade of gasoline.

Q. And your particular grade of gasoline is handled by retailers? A. Only because there is a demand for it, not because it is a pleasure to handle it. 1742

Q. No, only because the Standard Oil of New York or of some other state or the Gulf or the Texas is handled by a certain number of retailers because there is a demand for that product? A. Unquestionably. That is the only reason a retailer would handle any of it.

Q. Getting beyond the retailer and coming down to the individual consumer, how many out of a hundred will demand a particular grade of gasoline? A. I have told you my own experience is that nine men out of ten or ninety out of a hundred will buy the gasoline of their own preference. 1743

Q. To follow that to the logical conclusion, nine out of ten will demand your own product? A. I do not see that process of reasoning. I said nine out of ten would buy a gasoline of their own preference. I would be very happy if nine out of ten would buy ours.

Q. I see, you are quite correct, Mr. Leonard. Did you testify that in your opinion the number of leasing and loaning pumps and tanks tended to increase

competition? A. Yes. I do not know that I testified to that, but I—

Q. I had you down as testifying to that? A. What I did testify to as I recall it is that it has had the tendency to expand the business of our competitors and particularly of the smaller competitors.

Q. What is your opinion as to the effect of competition, does it increase or decrease competition? A. It has unquestionably increased the competition purely because it has increased the volume of available business.

1745 Q. Competition between whom, Mr. Leonard? A. Between—now, just what do you mean? You ask me the question whether it has increased competition?

Q. That is the question which was put to you by Mr. Schekter, and I want you to tell me what particular competition you had in mind when you answer that? A. I can give you an instance, the Maloney Oil Company. I will say four years ago they were doing business practically exclusively in Scranton. Today through the medium of leasing and loaning outfits they are doing business in Wilkes-Barre, in Shamokin and in Pottsville.

Q. Then you regard the lease and loan agreement
1746 as a device to get new customers? A. I regard it as a medium for the extension of their business.

Q. As a matter of fact is not the way I put it correct, that you regard it as a device to get new customers? A. If you want to phrase my answer for me I will not accept your language, no. I do not say it is a medium of getting new customers. Can I ask to have the original question read and my answer?

(The previous question and answer were then read as above recorded.)

Q. Don't you regard the extension of a man's business, the getting of new customers? A. Yes, I will say it has got to be.

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Q. And it was the same thing in the long run, was it not? A. What is the same thing?

Q. Extending business and getting new customers is the same thing, is it not? A. Yes. I will say that is correct.

Q. Now, what particular kind of competition was increased by the use of the loan or lease agreement? A. I would say that previous to the Maloney Oil Company coming to Pottsville that they were not a competitor there. Now, today they are a competitor there.

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Q. Because by the use of these loaned and leased equipments they have obtained certain local dealers to handle their product? A. They have put in tanks and pumps at logical places for distribution and extended the distribution of their material.

Q. And without such loan and lease agreements they would not have been able to enter Pottsville, is that correct? A. No, I could not answer that.

Q. Did you not cite this as an illustration of your statement? A. Yes, but I could not answer you that they would not have to come into Pottsville.

Q. Do you attribute their getting into Pottsville as the result— A. I attribute it as a means or medium for establishing their business there.

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Q. And by the use of that medium for establishing their business there they get the business from men who would have dealt with other companies? A. No, I do not know, they may have people there that would never have been in the gasoline business at all if it had not been for the tank and pump as a medium for doing business.

Q. That is a perfectly fair answer and something I wanted to develop. You cited an illustration of some city in Pennsylvania where you put in two pumps and tanks where there had been no dealers at all, on a

certain street. Is that correct, Nanticoke? A. There were dealers but they were off the main highway.

Q. I mean by the installation of your two sets of equipment, two additional dealers were added to that territory? A. Yes.

Q. What is the proportion of new dealers which have been created by this arrangement to the number of existing dealers with whom you have installed tanks and pumps? A. Do you mean over the past four or five years?

Q. Yes? A. I would think that such a number of
1751 dealers that have been created over the last four or five years are in about proportion to the increased number of automobiles, that where there were probably a thousand dealers before there are eight or ten thousand today.

Q. And of that eight or ten thousand how many do you think were brought into the business because they could get a pump and tank from your company? A. Oh, absolutely, very few of them were brought into business because they—

Q. Well, your policy is to seek out an existing dealer to put in your equipments with him, is it not? A. Are you talking now about the lease or loan outfits?

1752 Q. Yes. A. I would say we do not seek out dealers. We primarily seek out dealers in logical locations to sell them an outfit, if it is a logical location and we are not represented and we cannot sell them an outfit we consider it good business to lease or loan it.

Q. Can you give me the proportion of— A. Leases or loans?

Q. Yes. A. We sell practically—

Mr. Hayes: That is already on the record.

The Witness: We sell about four outfits to one that we lease or loan; about twenty per cent.

Q. Did you testify that when there was a change from one oil company to another on the part of a retail dealer it was more likely to be the action of the oil company than the retail dealer? A. Yes, those changes come about through a dealer becoming an unsafe risk as to credit or it may come about through some misunderstanding or dissatisfaction.

Q. And that happens occasionally in the case of a dealer who has one of your leased equipments? A. Yes, I would say that that is a fair statement, that it is apt to occur.

Q. All the leases are so drawn as to make it incumbent on that dealer to use your product in that particular equipment? A. In that particular outfit. 1754

Q. What happens to the dealer when you withdraw credit from him and he has your equipment? A. He can buy from us for cash or if he buys from a competitor we withdraw our equipment.

Q. But you regard the contract as binding upon him not to use the product of any competitor at any time in that equipment? A. Unquestionably, that is a part of our formal contract.

Q. Do you ever refuse to supply a dealer who has one of your leased equipments for any reason at all? Has it happened? A. Well, I can only answer you in the general conduct of our business, that it would seem a perfectly feasible thing for me, regardless of whether a man had a leased or loaned equipment, when it comes to the question of his credit, the fact that he has a loan in does not enter into it at all. 1755

Q. Has it happened in your experience that your company has refused to supply a customer who had one of your loaned or leased equipments? A. Yes, and we have removed the outfit.

1756 *Richard D. Leonard, Cross*

Q. And in the meantime he could not buy from anybody else, is that correct? A. Certainly he can. He can buy from whomever he chooses.

Q. But until you remove the outfit he could not use it? A. The outfit is not the only thing a man may have in buying gasoline. He can buy it in steel barrels.

Q. As a rule the garage man, the curb man, has only one outfit? A. As a rule may mean a great many things. There are any number of garages today that have two outfits.

1757 Q. But the larger proportion of garages, curb pump men, have only one outfit? A. I would say in the large city centers the growing tendency is to have two outfits.

Q. Speaking of actual conditions at the present time, embracing the outlying districts and smaller communities as well as the big centers, it is a fact that in the majority of cases the man has only one outfit, is it not? A. I would assume that that is fair, that one outfit prevails.

Q. And did you testify that you believed that the merit of this system lay in the fact that it reduced the cost of delivering your product? A. I said that

1758 that was one of the very important factors of it, that adequate storage is a very important item in economizing on your cost of delivery.

Q. And did you testify you carried these as a part of your own equipment of your own company? A. Yes, we have; lease or loan agreements are a definite plant item.

Q. And when they are installed in some retailer's place of business do you regard that as an adjunct of his business or of your business? A. It is our property.

Q. Do you regard it as an adjunct of his business

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or your business? A. It is a medium of his business unquestionably.

Q. And do you carry it on your books as an investment in equipment for your business? A. Yes, we have got to. It is a piece of property that we have got to carry somewheres and it is really a plant item.

Q. And you regard it as a part of the equipment of your business? A. Absolutely.

Q. And a part of the equipment of your distribution? A. That is part of our medium of distribution.

Q. When did your company adopt the practice of loaning or leasing equipment? A. I would say that I 1760
can only answer from the records, definitely for three years, but I feel quite sure that to a more or less modest extent we leased or loaned prior to that. Probably a safe statement would be the last four or five years.

Q. Do you know whether or not your company or one of its competitors first adopted the practice of loaning or leasing equipment? A. I know that leasing and loaning was done before we adopted it.

Q. Do you recall by what company? A. My first information on it came from the companies through the middle west.

Q. I mean, that is in the territory covered by your 1761
company? A. No.

Q. I am speaking now with reference to the territory in which your company does business? A. I can only answer you with certain modifications, that my general impression is that in 1915 and 1916 tanks and pumps were being installed by the companies in the Pittsburgh region.

Q. Did it have any effect on the business of your company? A. I cannot answer that it had any effect. The general tendency of our business was an increasing tendency just—

Q. Do you recall whether or not that had the effect of causing you a loss of customers? A. No, I do not think so. I have no specific instance of our having lost a customer due to somebody loaning him an outfit.

Q. Did your company adopt the practice just about as soon as any other company in that same territory? A. No. I think we were a little bit late. You should understand, of course, that at that time we were merchants of a tank and pump.

Q. You were at all times selling tanks and pumps?
1763 A. Yes, we have always sold a considerable quantity.

Q. Do you prefer to sell them where you can? A. Yes, I do.

Q. That leaves the retail dealer independent of your company entirely? A. Except that he has a tank and pump with our trade-mark on it.

Q. He can remove that if he wants to? A. And our experience is that a great majority of them adhere to it and do not change. I always feel we are reasonably safe on a man we have sold to, and he is our customer for a considerable time.

Q. Do you sell them on credit? A. Over a period
1764 of time a man may have—I would say that the time might extend for a year or a year and a half.

Q. And during that time you are reasonably safe that you have got the customer? A. No. I said our experience was that any man we have sold an outfit to, and a great many of our outfits are sold for cash, is a customer of ours until we do something or he does something that makes it undesirable for us to do business.

Mr. Burdeau: That is all.

By Mr. Zechiel:

Q. Did you hear either of the witnesses this morning? Did you hear either of the New York companies testify as to how they procured their pumps and tanks and equipments? A. Yes, both Mr. Young and Mr. King.

Q. Is your system of method and practice of obtaining those equipments substantially the same? A. I would say the same with the exception that we build a great many of our own tanks.

Q. But many of them you do buy in exactly the same way and install in the same way? A. Yes. 1765

Q. What per cent of your gallonage passes through your leased and loaned equipment?

Mr. Speer: Do you mean gallonage that goes to the retail trade?

Mr. Zechiel: I am speaking now with respect to gallonage that goes to retail trade, yes.

A. Well, Mr. Zechiel, it will be more or less of an approximate figure but I would assume that it would not be more than fifteen per cent.

Q. About fifteen per cent? A. That is on the general assumption that our—we have a big consuming business. That is the business where we are deliver- 1767
ing direct to consumers through the medium of our service stations and our direct deliveries to the trade.

Q. Yes, I am taking all that into consideration, and I think that is understood? A. And that possibly sixty per cent of our business is done through the medium of some form of dealer. Now, of that possibly twenty per cent—

Q. Do you mean a retail dealer? A. Yes, I mean a man that is handling gasoline and reselling it. Now, I would assume that of that the business among these retailers through our lease or loan agreement is

in about the same proportion as our leases or loans are to our sales of tanks and pumps.

Q. About twenty per cent? A. About twenty, not twenty per cent of our total business; probably ten or fifteen per cent of our total business.

Q. And about twenty per cent of the business that you do through retail establishments? A. Yes, and is probably done through lease or loan agreement.

Q. In your examination in chief with respect to the advantage of having large dumping places for your gallonage I think you testified that that advantage
1769 showed itself immediately in the cost of delivery? A. Yes, it is purely a question of the volume that you can haul for definite distances.

Q. I do not know that you testified to this, but in that respect was it your position that by using the lease and loan method of distributing your pumps and tanks you were increasing the dumping, or I do not know what word you used—dumping, is that what you do when you put it into one of those— A. Storage?

Q. No. I mean a single haul, dumping into a particular tank; was it your position by the lease and loan method you were able to make a large number of single haul dumpages? A. Yes, full load dump. Here is
1770 a town that we will say the weekly consumption is possibly two thousand gallons. Now, if we are making deliveries there once a week and we are getting all of the business, if we could make full load dumps it would mean two trips with a thousand gallon wagon. If there is only one receptacle there it means repeated trips, because that man never permits himself to get out and is never in a position to take a full load, so that he always takes a partial load and requires us to go a repeated number of times.

Q. Do you find it in that respect that your lease and loan equipment are more efficient than the equipments you sell to your customers? A. No.

1771

Q. What is your position, that the trade requires more gallonage for storage or more pumps for delivery? A. I think it is both, Mr. Zechiel, that there are too many points of storage that are illogically located and there have got to be more places where it is convenient for people to go without going off the natural route. I cannot see that the gasoline business can be very much out of line with what the kerosene business is. In Philadelphia, as an example you can go out most around any corner and get a can of kerosene, and there are actually in Philadelphia today almost five thousand to six thousand points in the city 1772
where you can go and buy kerosene if you desire it and where people do go to buy it. There are only six hundred points or dealers in Philadelphia to buy gasoline from, which is probably five to six times the volume of consumption.

Q. Do you think the points of distribution of gasoline ought to be commensurate with that of kerosene? A. No, I do not think it ought to be in that proportion because people buy relatively in bigger quantities.

Q. Do you think the points of distribution in the city, say, of Philadelphia ought to be more numerous? A. Very decidedly. I think it ought to be more convenient for people to get gasoline without traveling up back streets and going out of their ordinary 1773
routes of travel.

Q. Would you not say then that the thing which ought to be done in the City of Philadelphia would be to establish service stations on regularly traveled highways for the convenience of the public? A. The two things are entirely different, Mr. Zechiel. On the streets that are intensively traveled, they are the normal lines of traffic for people who come in that direction, but there is a great big expanse of people or territory that people do not touch those main lines of traffic

at all, or who have to travel a number of streets before they reach them.

Q. Let us divide them up? A. For instance in Philadelphia the north and south street is unquestionably Broad Street. It is the one great big common street of traffic. Regardless of West Philadelphia or taking in West Philadelphia there are at least sixty-nine other streets going north and south over which people travel. That same thing applies north and south. There are Market Street, Chestnut Street, Walnut Street, in the central part of the city that are streets of intensive
1775 traffic going east and west. In addition to that there are an equal number, probably sixty to seventy streets that are traveled which run east and west.

Q. Take those centrally located streets where there is live traffic, what is your opinion about it, that there ought to be more pumps there or larger gallonage? A. I think Broad Street is a very logical street for the establishment of very adequate service stations.

Q. So what you need there is less pumps and more gallonage, more highly concentrated service stations? A. I think so. I think that is the logical outcome.

Q. You think that is what will happen? A. That is what I am doing.

1776 Q. Is not that true in a great degree not only of Philadelphia but of other large cities, that service stations with large gallonage will take the place of pumps at numerous places with smaller gallonage? A. No. For instance I will say on Saturday in Wilmington I made a study of the City of Wilmington. It was to supplement a very intensive study that had been made by men in subordinate positions. But I would say that there are only two logical points on which we could afford to spend the money for service stations and at each of those points the ground alone would cost us fifty thousand dollars apiece. There are no

other points that I would consider desirable, where there are dozens of points where a tank and pump would be preferable.

Q. I think you misunderstood my question, perhaps. I only meant that there were places, if not in all the large cities, in many of the large cities where the thing that is needed is a service station with large gallonage similar to what you described on Broad Street in Philadelphia? A. Yes, but it will only serve a relatively small proportion of the total business.

Q. Yes, you will still need pumps and tanks, but you will still have a large amount of gallonage business through the service station and that will be true in many highly centralized and concentrated areas, will it not? A. Yes, I think that where the traffic of any city follows relatively few lines of streets there service stations are very logical, because you have a long stream of traffic passing there regularly. For instance, Baun Boulevard in Pittsburgh is almost the only direct avenue or channel from East Liberty to Pittsburgh and over which thousands of automobiles pass. I recall four years ago I counted them and there were somewheres between fifteen thousand and twenty thousand machines going over it. That is a street with very intensive traffic, a natural funnel for all that traffic to pass over. If the same traffic was spread out over fifteen or twenty streets the service station situation would not be there. 1778 1779

Q. Then you would want pumps? A. Then the only thing you can economically do is to establish a miscellaneous distribution of service, and the pump is the best medium.

Q. Can you state whether you have more or less tanks in the large cities than you have in the small cities, out in the rural territories? A. In proportion to the volume of business there are more tanks and

pumps in the rural districts than there are in the larger cities. The big volume of business is in the cities. For instance if you take any one of the big consumers, take a consumer like John Wanamaker, Gimbel Brothers, Strawbridge & Clothier, the big department stores, their consumption alone in that one company, where there is no tank and pump proposition comes into it at all other than their own equipment, would more than overbalance half a dozen outlying towns where there are fifteen or twenty equipments.

1. 1781 Q. Do you think it is necessary to have the pumps established as frequently as they are in the City of Philadelphia or other large cities, per block? A. There may be some differences of opinion as to the location of tanks and pumps and there may be errors made, but if you are asking that as a general question—

Q. I am asking for your opinion about it, yes? A. Asking as to my opinion. I consider Philadelphia is a good market for the sale of tanks and pumps.

Q. You mean there ought to be more put in? A More of them, absolutely.

1; 1782 Q. And you think you could sell them? A. I would say that the commercial truck is a great big influence in that, that where those trucks are traveling and the streets over which they have to travel are good mediums for the establishment of service.

Q. How many more pumps could you sell than you do sell now, if nobody else leased or loaned these pumps, what percentage of these do you say you cannot sell and have to lease or loan could be sold if nobody else would give them one?

Mr. Speer: Now, that is all very speculative

Mr. Zechiel: Oh, well, let him answer it.

A. What is the potential market for tanks and pumps in Pennsylvania, as an example?

Q. I will get my point. You testified on direct-examination that a certain per cent of pumps and tanks could not be sold but had to be leased and loaned? A. Yes.

Q. And you could not sell them. I am asking this question, if nobody, if none of your competitors would lease or loan an oil tank or pump what per cent of those that are now leased and loaned would buy? A. Well, that would only be a hazard on my part, Mr. Zechiel. There is no hesitancy on my part to answer you except that I cannot answer you without having some faith in my own guesses. 1784

Q. Do you think a good percentage of them would be bought? A. Yes, I think probably an appreciable per cent of them they would buy if they were properly sold on the proposition. The fact is I presume a great many of our competitors are not in the business of selling tanks and pumps.

Q. That is, do you think they lease or loan indiscriminately without trying to sell? A. I will not say indiscriminately. I will say they lease or loan without trying to sell. For instance you have the testimony of Mr. Gatchell, that they make absolutely no effort to sell a tank or pump.

Q. All these leases and loans you make are profitable 1785 as far as sales of gallonage are concerned? A. Yes.

Q. And would be profitable to the owner of the garage, say if it is a garage, if he were to own his own equipment? A. I consider it is a very good investment for a man to make, that he gets a very good return on the gallonage that passes through it. That is where he has a good differential to handle business. There may be difference of opinion on what a man should have who has a differential.

Q. Talking about differentials, if you were to offer a differential in price on large tank wagon deliveries,

say, would that increase the number of larger installations of tanks among your customers?

Mr. Speer: We object to that as immaterial.

A. I think it would but I would regard it as a serious discrimination against a man who is doing relatively the same business and probably has not got the consumption. I would also regard it as one of the cancers of our business that creates dishonesty in our drivers and which we are fighting continually. Anything that gives a man an opportunity to make a
1787 differential gives that man an opportunity to be dishonest with someone else. We have gone through that full load proposition on kerosene. A man will make a presumed full load delivery somewhere and as a matter of fact it is made up of half a dozen individual deliveries brought into one full load when he can take the better price. Anybody that has been in the business a number of years realizes that that does not work, and we are constantly giving serious thought to surrounding our business with those things that protect us against dishonesty.

Mr. Zechiel: I have no further questions.

(Witness excused.)

1788

CHARLES E. WOODBRIDGE was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct-examination by Mr. Nesbitt:

Q. What is your business, Mr. Woodbridge? A. I am a sales manager of the Texas Company.

Q. How long have you held that position? A. About ten years.

Q. Is your company engaged in the practice of leasing tanks and pumps through which gasoline is dispensed, at a nominal rental? A. It is.

Q. Mr. Gatchell of your company testified yesterday that deliveries into such leased equipment were made from your refined stations, is that correct? A. That is correct.

Q. Your trucks and tank wagons are sent out from refined stations and make deliveries into these equipments? A. That is correct.

Q. Do you know of any instance where such deliveries are made from your refined stations into such 1790
leased equipments across state lines? A. I cannot recall any such cases.

Q. The equipment which you lease and loan is purchased direct from the manufacturers, is that right? A. It is.

Q. How is it handled upon shipment from the manufacturer? A. Well, in most cases it is shipped into our warehouses and there stored and then when we have a call for an installation it is shipped out to the place of installation and generally installed by our own men.

Q. When received into your storage from the manufacturer is the equipment assembled? A. Not all of 1791
it; that is there are various parts, the pump one part and the tank another and there are foot valves and various fittings all separate.

Q. Can you tell me about how many parts a pump consists of? A. Well, you refer to the pump alone or to the pump and tank, the whole thing?

Q. I am referring to a pump alone? A. Well, I could make a guess. I should say—

Q. Half a dozen? A. Yes, I should say something like half a dozen, perhaps half a dozen, or ten, or something like that.

Q. Those parts are assembled at your storage or are the parts shipped unassembled to the place of installation? A. Well, they are shipped together, I should say they were assembled at storage and shipped together, but they are not put together at the place of storage but they are put together at the place of installation.

Q. Do you have numerous places of storage for such equipment? A. Yes, quite a number.

Q. Have you found the practice of leasing and loaning pumps an economical practice for reaching
1793 the ultimate consumer with your gasoline? A. Well, I should say I have found it economical and, well, rather necessary.

Q. Have you found the practice of leasing and loaning pumps a necessary measure to meet the demands of the trade? A. I have, yes.

Q. Do you believe there would be as many curb pumps installations as there are now had this practice of leasing and loaning not been engaged in? A. No, I am sure there would not have been.

Q. Do you believe that there are too many curb installations of such equipments? A. Well, not from the standpoint of the consumer and not from the stand-
1794 point either of the distribution by the oil companies of the maximum amount of product they wish to distribute.

Q. You aim to reach the ultimate consumer with your product? A. That is the purpose.

Q. And you identify your trade-mark with your product? A. We do. We have on all of our pumps that we have leased or loaned the trade-mark and in the globe that is on the top we also have our trade-mark and our name.

Q. Do you believe if the practice of leasing and loaning equipment at a nominal rental had not been

engaged in that the present facilities for dispensing gasoline to ultimate consumers would be adequate for present trade? A. Well, I do not think it would have been nearly as much and I think it would have put the public to some considerable inconvenience. Now, adequate is a broad word and people might go, if they could not get it in any other way, five or ten miles for gasoline, but when it comes to a matter of convenience I am sure that the facilities would not have been anywhere near as convenient as they are now. 1795

Q. Mr. Woodbridge, through your territory are deliveries of your product made to private garages? A. Yes. 1796

Q. Is it or is it not a fact that deliveries are not as frequently made to private garages now as previously? A. Well, I can only answer that this way, that I think there has been some gradual increase in the number of private garages, but I think the tendency is for the man to use his own equipment less and use the facilities offered by the oil companies and by the garages and all that more, because there is a comparatively small difference between what the private garage owner would pay if delivered to him directly and the amount he would pay through a filling station or a service station or a pump, and at the difference I think he would rather go to the filling station or the pump and get the service that he would get, keep his hands clean and not bother to handle the product himself. 1797

Q. That has cut down the expenses of delivery, too, has it, on the part of the company? A. Of course the delivery generally is very much larger to the pump or to the filling station or that sort of service than it is to private consumer.

Q. Trips are not as frequent? A. Trips are not as frequent and the deliveries are larger to the filling stations and that of course is more economical.

1798 *Charles E. Woodbridge, Cross*

By Mr. Speer:

Q. Has this frequent establishment of pumping stations relieved the man of limited means with a small garage of the necessity of putting in average facility? That is, can he rely on the filling station and as a result does not go to the expense of equipping himself? A. I should think it relieved him entirely. The amount he pays in addition for services at a station is so small, it has relieved him entirely of the necessity of providing the service himself. In other words, other people have provided the service which
1799 if they did not provide he would have to provide himself.

Q. He does not have to go to the expense of putting the storage in his garage? A. Yes.

CROSS-EXAMINATION by Mr. Zechiel:

Q. What company are you with? A. The Texas Company.

Q. How much less efficient do you think as to number of installations, point of service, would the whole gasoline industry be in if there had been no leasing or loaning of tanks and pumps? A. You know that is
1800 a kind of a guess.

Q. Yes? A. It is one of those things that has been done by the oil companies and as a natural extension of their business and it is pretty hard to say what would happen if they had not gone into it.

Q. You did testify though on direct-examination, I do not know just what your language was— A. That it would be less, but it is pretty hard to say how much less. I think it would be considerably less.

Q. Considerably loss you say? A. Yes.

Q. Could you transpose that "considerably" into percentages? A. Well, I do not think I could exactly.

Q. Your company does not sell equipments at all as a practice, does it? A. No, not as a practice. We did a number of years ago for a very short period and I do not think we have done that for a matter of five, six or seven years.

Q. And I believe about sixty to sixty-five per cent of your business is done through leased or loaned equipment, with the retail trade? A. I should think about that.

Mr. Zechiel: Is it a matter of record as to how these pumps are bought?

Mr. Nesbitt: I think Mr. Gatchell testified 180
on that point, that we bought them direct. I asked Mr. Woodbridge that a moment ago. We buy them direct from the manufacturer and ship them into storage.

Mr. Speer: And later he said as I recall it, that there was an understanding that they were not to sell them, while there was not any contract to that effect.

Mr. Nesbitt: Mr. Gatchell gave some testimony to that effect.

Mr. Speer: We might as well have that established, though.

By Mr. Zechiel: 180

Q. Where is your territory? A. That I am handling?

Q. Yes? A. It covers all the territory on the Atlantic seaboard north of South Carolina—

Q. Is it the same territory as Mr. Gatchel's? A. Mr. Gatchell is my assistant and it would be the same territory.

Mr. Zechiel: I was in hopes you would put somebody on about the southern territory.

1804 *Charles E. Woodbridge, Cross*

Mr. Nesbitt: Mr. Woodbridge may be able to give you some information.

Q. Do you know anything about your southern territory? A. I know very little about it in the matter of detail, but if you want to ask any questions I will be glad to answer them so far as I can.

Q. Do you know whether your company is engaged in the practice down there or not? A. Well, we are at all, that is we are doing to some extent. I know that as a matter of knowledge.

1805 Q. Do you know whether or not it is to as large an extent as here in this territory? A. Well, that I could not say, but the general impression is not to quite as large an extent.

Q. Do you know why it is not generally the practice there as it is here? A. No, I really don't know, as perhaps my impression is wrong about the extent of it.

Q. I think you are right about the extent, but I was particularly anxious about the why.

Mr. Nesbitt: It is not quite as popular down there as here.

The Witness: That is one reason.

1806 (Witness excused.)

Mr. Zechiel: I want to say, Mr. Examiner, that there have been at times all through this hearing more or less reference to the Bowser Company and their distribution of pumps, and much of the evidence by implication goes to the effect that the Bowser people are responsible for these complaints and this whole investigation. Whether they want to be responsible or whether they do not is wholly their own personal affair, but the fact is that that company is not responsible for these investiga-

tions. Practically all of this last phase of it was 1807
on my own suggestion to the Commission, for the reason that I thought every company ought to be treated alike.

So far as the initiation is concerned, this whole investigation was initiated and I think even the evidence in this case goes to show, by certain oil companies in the west, competitors of the Standard Oil Company of Indiana. And Docket No. 85, the Standard Oil Company of Indiana docket number, which was the first order to cease and desist which was issued, was docketed I think some three or four years ago, early in the history of the Federal Trade Com- 1808
mission, and a long time—I do not think the Bowser Company knew there was a Federal Trade Commission at that time; at least it was before they had anything to do with any complaint of any kind. I merely make that statement because of numerous things that have came out on the record that would seem to implicate the Bowser Company as being the beginners of this investigation.

Examiner Dunham: Is this the last witness.

Mr. Zechiel: I understand it is the last witness.

Mr. Nesbitt: It is our last witness. 1809

Mr. Speer: I do not believe I will take time to call any more.

Mr. Zechiel: I was going to say we are going to adjourn *sine die* and probably we may have a hearing in Washington and if you care at that time to bring other witnesses you may.

Mr. Nesbitt: Are you going to have a hearing?

Mr. Zechiel: It looks as if we will, but we will adjourn that way. Let the record show that thirty days after the receipt of the com-

1810 plete transcript of the evidence by the respondents and the Commission the briefs on behalf of the respondents will be due and also on behalf of the Commission.

Mr. Speer: There having been testimony taken in a number of cases of the Federal Trade Commission against a number of oil companies in cases where the charges were the same as in the cases now being heard and testimony in those cases was taken at Columbus, Ohio, from the 27th to the 29th of October, at which hearing and taking of testimony counsel for the Federal Trade Commission were present
1811 and produced and examined the witnesses and the respondents, while different from the present respondents, were represented and cross-examined the witnesses. I therefore ask that the testimony so taken be considered a part of the record in this case with the same effect as if it had been taken in these present cases, and I ask the consent of counsel for the Commission to that proposition. I ask your consent that it be offered in evidence.

Mr. Zechiel: I cannot consent to it, and I also want to oppose offering that testimony for the reason that it is not so, that the facts in that
1812 territory are in any way related to the facts in this particular territory and that the evidence so taken is irrelevant and immaterial.

Mr. Speer: Then I move the Honorable Examiner that that testimony taken in those cases be considered as a part of the record in this case.

Examiner Dunham: Do you want me to pass upon it?

Mr. Burdeau: Before you do I want to point out this, that Judge Speer is speaking for the Standard Oil of New York.

Mr. Nesbitt: No, the motion is made as I 1813
understand it on behalf of all the respondents.

Mr. Burdeau: Just a minute. All who are here perhaps join with Judge Speer, but there were seven or eight companies summoned to appear at this hearing who were not present and represented by counsel, and they might very much oppose having the record include the testimony taken in Ohio.

Mr. Nesbitt: They will have to look after themselves. Let it be considered on behalf of those present.

Mr. Burdeau: If the motion is made on behalf of those present represented by counsel— 1814

Mr. Speer: Let me state it is in behalf of the Standard Oil of New York, the Texas Company and the Atlantic Refining Company and the Standard Oil Company of New Jersey, I presume?

Mr. Hayes: It is immaterial to me.

Mr. Burdeau: I would suggest that the Examiner defer the ruling of the Commission and let the record show the motion made and let the Commisison pass upon it.

Examiner Dunham: I think I would be an improper person to pass upon it for the reason I am only here as a substitute to hear this 1815
proof and Mr. McCorkle who has acted in all these cases knows about the facts in the previous hearing and could pass upon it much more intelligently than I could and I think he is the man, if an examiner should decide that question at all.

Mr. Burdeau: Moreover, this amounts to a consolidation of these two groups of cases, practically, and it requires a resolution of the Commission to consolidate any cases.

1816 *Exhibit No. 2*

Examiner Dunham: You will all have notice of what my ruling is before you file your briefs.

Mr. Speer: Counsel for the said companies, this motion not being granted, will give notice that it will be renewed before the Commission.

Whereupon at 4:45 P. M. the hearing was adjourned without date.

1817

Exhibit 2.

THE UNITED STATES OF AMERICA,

BEFORE THE FEDERAL TRADE COMMISSION,

Washington, D. C.

FEDERAL TRADE COMMISSION vs. MALONEY OIL & MFG. COMPANY.	Docket No. 309.

1818

Notice of Taking of Testimony.

Please take notice that testimony in the above entitled cause will be taken before George McCorkle, an Examiner of the Federal Trade Commission on behalf of the Commission and Respondent in the City of New York, State of New York, in the offices of the Federal Trade Commission, 20 West 38th St., on the

Exhibit No. 2 1819

20th day of November, 1919, at 10 o'clock in the forenoon of that day.

(Signed) CLAUDE R. PORTER,
Chief Counsel for
Federal Trade Commission.

Acknowledgment is hereby made of the receipt of the above notice, dated day of , 1919.

Attorney for Respondent.

1820

November 10th, 1919.

Mr. James M. Collins, General Mgr.,
Maloney Oil & Manufacturing Company,
Scranton, Pa.

Gentlemen:

Enclosed is notice of the taking of testimony on behalf of the Commission and Respondent. The Commission has issued an order combining the following cases in one hearing for the purpose of taking testimony only:

1821

Atlantic Refining Company,
Standard Oil Company of New Jersey,
Maloney Oil & Manufacturing Company,
Red "C" Oil Manufacturing Company,
Harris & Company, Elmer E.,
Suor Oil Products Corporation,
Pavania Oil Company,
Standard Oil Company of New York,
Kendall Refining Company,
American Oil Company,

1822 *Notice of Final Hearing*

Gulf Refining Company,
Sterling Oil Corporation.

Will you kindly sign the notices and return the original to me at Washington, D. C.? The copy you may keep for your files.

Very truly yours,
FEDERAL TRADE COMMISSION,
CLAUDE R. PORTER,
Chief Counsel.

1823

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